



United States Bankruptcy Court
District of Massachusetts

Personnel Manual

Revised May 2013

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INTRODUCTION

The contents of this personnel manual and the policies and procedures described in it are presented as a matter of information only. The manual is intended to provide guidelines for managers and employees of the United States Bankruptcy Court. While this Court endorses the policies and procedures described herein, they are not conditions of employment.

Personnel policies, procedures and benefits by their nature are constantly under review as they are affected by changes in applicable law, regulations, economic conditions, and the way the United States Bankruptcy Court does business. This Court necessarily reserves the right to modify, revoke, suspend, terminate or change any and all such policies, procedures, and benefits as it sees fit with or without notice, at any time.

Certain pension, health, and other welfare benefit plans depicted in this manual are described more fully and completely in other formal plan documents; and, those documents are controlling if there are any inconsistencies with the descriptions herein. We have attempted to keep any inconsistencies to a minimum.

The language used in this manual is not intended to constitute a contract between the United States Bankruptcy Court and any of its employees. The Court or an employee may terminate the employment relationship at any time and for any reason without prior notice. All court employees are "at will" employees. As court employees we are:

- In excepted service, not competitive service
- Not covered by statutory merit system
- Have no appeal rights to Merit Systems Protection Board
- Have no property interest in their employment

Questions concerning the nature of this employment may be brought to the Court's personnel department.

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PERSONNEL MANUAL

1 THE UNITED STATES FEDERAL JUDICIAL SYSTEM

In part, Article III of Section 1 of the Constitution states, "The judicial power of the United States shall be vested in one supreme court and in such inferior courts as the Congress may, from time to time, ordain and establish." Over the years the United States court system has evolved into the U.S. Supreme Court, twelve circuit courts of appeals, a U.S. Court of Appeals for the Federal Circuit, the U.S. Court of Claims, the U.S. Court of International Trade, 94 U.S. district courts and 94 U.S. bankruptcy courts.

1.1 ADMINISTRATION OF THE U.S. COURTS

The overall administration of the courts is the responsibility of the Judicial Conference of the United States. The Conference consists of the Chief Justice of the Supreme Court, the Chief Judge of each Circuit, the Chief Judge of the Court of Claims, and a district judge from each circuit. Effective October 1, 1984, two at-large bankruptcy judges were made members of the Judicial Conference.

The Conference generally meets twice a year, in March and October. Permanent committees are responsible for reporting to the full Conference on various aspects of the business of the courts.

Ordinarily, each of the twelve circuits holds a judicial conference at least once every two years, at which time educational seminars and matters relating to the circuit are discussed. Each circuit judicial conference consists of all the judicial officers of that circuit.

The administrative arm of the Judicial Conference is the Administrative Office of the United States Courts (AO), headed by its Director. The Administrative Office is divided into a number of divisions and offices, each having responsibility for various aspects of judicial administration.

The Bankruptcy Court Administration Division has been established to assist the Director with all matters relating to administrative matters in bankruptcy. Additionally, the Bankruptcy Judges' Division was established to assist the judges and clerks of court in the performance of judicial and administrative duties.

The research and development arm of the AO is the Federal Judicial Center (FJC), which was established in 1967. The FJC is responsible for carrying out research and investigating methods of increasing the administrative effectiveness of court personnel.

In addition, the FJC conducts seminars and training programs for judges, clerks of court and other personnel in the court system.

Both the Administrative Office and the Federal Judicial Center are located in Washington, DC.

1.2 COURTS OF BANKRUPTCY – HISTORICAL DEVELOPMENT

Bankruptcy is a legal process designed to deal with financial failure. Authority for creation of laws dealing with bankruptcy is found in Article I, Section 8 of the United States Constitution. Several bankruptcy statutes have been enacted and repealed since the founding of our nation.

The longest-standing bankruptcy statute was enacted in 1898 at Title 11 to the United States Code (officially referred to as the Bankruptcy Act). Public Law 95-598 (referred to as the Bankruptcy Code), enacted in November 1978, repealed the Bankruptcy Act except as it applies to cases commenced before October 1, 1979.

The federal bankruptcy statute takes precedence over state laws dealing with insolvency or collection of debts. As a result, a nearly uniform system applies throughout the United States, except as to certain matters which the statute leaves to the control of individual states.

1.3 BANKRUPTCY COURTS

Under the old Bankruptcy Act, federal district courts were the courts of bankruptcy. The judges of the district courts were granted authority for the appointment of referees in bankruptcy and were responsible for overall supervision of the administration of the bankruptcy cases in their district. The new Bankruptcy Code (Public Law 95-598), created a federal bankruptcy court, which for the purposes of obtaining jurisdiction, is an adjunct to the district court. New, Article 1 bankruptcy judges replaced the old referee system.

1.4 JURISDICTION OF BANKRUPTCY COURTS

Jurisdiction is defined as the authority by which courts and judicial officers take cognizance of and decide cases. Enactment of the Bankruptcy Code and its subsequent amendments brought about numerous substantive changes in the law dealing with bankruptcy, and the jurisdiction of a court of bankruptcy over an estate and its administration. Simply stated, any action brought against the estate, or concerning any assets of the estate, may be tried by the appropriate bankruptcy court. Furthermore, authority has been granted for the removal of any claim or civil action from a state or

federal court to the bankruptcy court. If it deems such action appropriate, the bankruptcy court has the right to decline to assume jurisdiction over such cases.

1.5 BANKRUPTCY JUDGES

Judges of the bankruptcy court are appointed to 14-year terms by the Judicial Council of each Circuit. Five judges are authorized for the District of Massachusetts: three in Boston, one in Worcester, and one in Springfield. Currently there are three judges sitting in Boston: the Honorable William C. Hillman, the Honorable Joan N. Feeney, and the Honorable Frank J. Bailey. The Honorable Melvin S. Hoffman presides in Worcester and the Honorable Henry J. Boroff presides in Springfield but also sits in Worcester.

1.6 OFFICE OF THE CLERK

The Clerk's Office functions as the administrative arm of the court. Its role is to accept new bankruptcy cases and related pleadings, review all documents for accuracy and compliance with the national and local rules, manage the case flow, schedule hearings and provide in-court support for hearings, and oversee dissemination of case information. The non-judicial aspects of the court's business are planned and managed by the Clerk of Court, who is appointed by, and serves at the pleasure of, the Judges of the Court.

1.7 CLERK'S OFFICE MISSION STATEMENT

The Clerk's Office will strive to render effective and courteous service to the judges and their staff; to the public, including debtors, creditors, litigants and other parties in interest; to members of the bar; and to other courts and government agencies, both federal and state.

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2 CLERK'S OFFICE ORGANIZATION

2.1 CLERK OF COURT

The clerk serves as the chief administrative officer of the court and is under the direct supervision of the judges of the bankruptcy court. The clerk's general responsibilities include the administrative management of all non-judicial functions and activities of the court, including case and records management, budgeting, financial planning, statistical reporting, personnel management, automation, space and facilities management, procurement, accounting and public relations. See, e.g., 28 U.S.C. § 156(b), 332(f)(3), 711(b) and 751(b).

The clerk consults with the judges and makes recommendations on matters affecting the orderly and expeditious direction of the court's business.

2.2 CLASSIFICATION AND SALARY

As an independent branch of the federal government, the Judiciary has its own set of rules for classification and salary. The compensation systems used by the Judiciary are the Judicial Salary Plan (JSP) and the Court Personnel System (CPS).

2.2.1 THE JUDICIAL SALARY PLAN

The JSP is administered by the Administrative Office of the U.S. Courts (AO), under the supervision and direction of the Judicial Conference. It encompasses pay and classification for bankruptcy court positions such as Clerk of Court, Chief Deputy, Law Clerk, and Judge's Secretary. For each, there is a general description of position duties/responsibilities, reporting structure, qualification standards, and a target grade.

The salary structure for the JSP consists of Grade Levels 1 through 18 and Within-grade Step Levels 1 through 10.

2.2.2 THE COURT PERSONNEL SYSTEM

After a lengthy study, the federal judiciary decided to create a personnel system that allowed more flexibility for managers to address the changing needs of the court system. The Court Personnel System (CPS) was approved by the Judicial Conference in 1993 and implemented in the District of Massachusetts in August 1996.

For the majority of Court employees, the CPS establishes criteria for classifying positions within the Court's organizational structure and a framework for compensation.

The CPS replaced the first 16 grades of the 18 grade JSP system with 12 classification levels (CL). The salary range for each CL is broader than in the JSP and is divided into 61 steps, with four step increments equal to one-step in the corresponding JSP Step Levels 1 through 10.

Under both the JSP and CPS systems, employees may advance to the target grade or classification level of their position after meeting requirements for length of service and performance. Advancement from one grade or CL to the next constitutes a promotion, and is not automatic. Discretionary step increases within a Grade or CL as well as promotions are earned through superior work performance, and require a formal request from the Appointing Officer to the Administrative Office (See [Section 3.11 PROMOTIONS](#)).

Each Classification Level in CPS consists of two parts:

Developmental Range (steps 1 through 24) to be used for pay adjustments based on progress in learning the job before an employee has achieved the full performance level. Employees in the developmental range are eligible for a within-level increase every 13 pay periods (six months), based on performance, until step 25 is reached. Depending on the employee's level of progress, a maximum of 18 pay steps may be authorized. However, regardless of learning speed, step 25 cannot be exceeded in this range.

- Full Performance Range (steps 25 through 61) is reserved for pay increases based upon longevity and acceptable performance as follows: (Steps 25–36) – Those employees with rating of Exceptional or Fully Successful will receive one default step and are eligible for up to 2 discretionary steps.
- (Steps 37–54) – Those employees with rating of Exceptional or Fully Successful will receive one default step and are eligible for up to 1 discretionary step.
- (Step 55–60) – Those employees with a rating of Exceptional or Fully Successful will receive one default step. They are not eligible for any additional discretionary steps.
- (Step 61) – Employees who are at Step 61 or their top step are not eligible to receive additional steps, but at the discretion of the Clerk they may be given an award commensurate with a Satisfactory or Superior Performance.

Note: Unacceptable Performance Ratings – Employees whose overall performance rating is unacceptable will not receive a step increase.

2.3 COMPENSATION AND PERFORMANCE

An employee's compensation is tied to their performance through the application of the Court's performance appraisal process. This process is based upon sets of observable and in some cases, quantifiable aptitudes, abilities and standards established by the Court and organized into five (5) categories. Three of the categories are common to all employee performance appraisals, one is job specific and the last is a bonus category for employees who routinely perform tasks outside their job assignments. (Managers, supervisors and team leaders have an additional category related to their supervisory duties.)

The common categories are:

- Professionalism and Customer Service
- Teamwork and Interpersonal Skills
- Work Quality, Productivity and Habits

2.3.1 PERFORMANCE RATING

Employees are given a Performance Rating under each of the categories previously listed. Using the scale 1 – 10 where 10 is the best, evaluators enter a number for each item listed under each of the categories. Formulas built into the evaluation tool calculate and translate the values into five levels of competency with the following assigned percentages:

Performance Ratings	
90–100%	Outstanding – Performance is consistently exceptional and exceeds the expectations of the position
80 – 89%	Very Good – Performance is above average and often exceeds the expectations of the position
70 – 79%	Good – Performance is routinely average and meets the expectations of the position
60 – 69%	Fair – Performance is occasionally below average and does not meet the expectations of the position
60% or Below	Needs Improvement – Performance frequently below the minimum standards of the position.

The Performance Rating is used to calculate a single Compensation Rating which, depending upon its value, will establish the employee's eligibility for an award. Each of the five categories used to evaluate performance is weighted by importance to the Court. The Compensation Rating is calculated as the sum of the Performance Ratings multiplied by their assigned weight, divided by 10.

Assigned Weights (Total Weight = 1000; Bonus = 50)			
Performance Category	Operations	IT Personnel	Supervisory Staff
Professionalism and Customer Service	225	266	150
Teamwork and Interpersonal Skills	150	190	150
Work Quality, Productivity and Habits	225	266	200
Job Specific Functions and Knowledge	400	278	250
Supervisory Ability			250
Bonus (Cross Training) ¹	50	50	50

2.3.2 THE COMPENSATION RATING

The Compensation Rating is then mapped to correlate to the following values:

Exceptional Performance – The employee consistently demonstrates outstanding performance in all aspects. Employee's work is of excellent quality and performed in an efficient, organized manner, with little or no supervision and consistently ahead of established schedules. Employee gets the job done well, even when faced with difficult and unforeseen problems.

Fully Successful Performance – This is the level at which fully trained and experienced employees are expected to perform. It reflects the accomplishment of duties and responsibilities in a thoroughly accomplished and professional manner. The employee's work products are generally of good or high quality and performed in an efficient manner. Duties and responsibilities are carried out successfully according to established priorities and schedules, under normal supervision. An employee in the Developmental Range can be rated at this level.

¹ The Bonus Category is not included in the total weight of 1000. It is rather an opportunity to add up to an additional 50 points for routinely covering jobs outside of your assigned duties, for example a case administrator performing ECRO duties more than twice a month.

Unacceptable Performance – The employee's performance shows serious deficiencies that require correction, retraining or adjustment. Work frequently needs revision or modifications to reach an acceptable level. Deadlines are regularly missed and/or work is incomplete or inaccurate. Employee often requires assistance from their supervisor and/or peers. An employee in the developmental range who receives this rating is not performing at an acceptable level relative to the employee's time in the position.

Note: An employee with a rating of 70 or better will receive their default step increase unless they are already at the top step or Step 61. Default steps are not awarded for a rating of 69 or below.

Performance Rating and Employee Compensation is summarized in the chart below:

Performance Rating and Employee Compensation Summary					
Performance Level	Developmental Range	Full Performance Range			
	Steps 1 – 24	Steps 25 – 36	Steps 37 – 54	Steps 55 - 60	Step 61
Exceptional (90-100)	2 Default + up to 16 Discretionary: 18 Total	1 Default Step Up To 3 Discretionary Steps Award Eligible	1 Default Step Up To 1 Discretionary Step Award Eligible	1 Default Step No Discretionary Step Award Eligible	No Default Step Award Eligible Only
Fully Successful (70-89)	2 Default + up to 10 Discretionary: 12 Total	1 Default Step Up to 2 Discretionary Steps Award Eligible	1 Default Step Up to 1 Discretionary Steps Award Eligible	1 Default Step No Discretionary Step Award Eligible	No Default Step Award Eligible Only
Unacceptable (Below 70)	Steps 1-61 - 0 Default Steps, Not Eligible for an Award.				
Timing	Discretionary Steps are Budget Dependent and, Except for Persons in the Developmental Range, are Awarded During the Fourth Quarter of the Fiscal Year			Award in the 4 th Qtr. of the Fiscal Year	

In the instance where the employee's Compensation Rating is Unacceptable or Performance Rating of Fair or Needs Improvement in any one category, the employee will be placed on a written Performance Improvement Plan (PIP) designed and developed by the supervisor and employee to bolster the skills needed for achieving and maintaining a rating of either Fully Successful or Good. All plans will require on-going discussions between the supervisor and employee as the supervisor monitors the plan. Where possible, the plan shall identify specific training (formal or informal), additional experience or assignments for practice and a schedule for reviewing progress in areas identified as needing improvement, and a time line for completion of the plan. In the

event the employee fails to improve their performance within the time line or a reasonable time thereafter, adverse action may be pursued by the Court.

Note: If a performance problem arises at any time, a supervisor may choose to help the employee by developing and implementing a Performance Improvement Plan; he/she does not have to wait until the annual review.

2.4 DEDUCTIONS

Mandatory deductions from gross salary will be made by the Administrative Office for local, state and federal income tax. Additional deductions are withheld relative to the retirement system the employee is participating in: Civil Service Retirement System (CSRS) or Federal Employees Retirement System (FERS).

In addition, permanent employees may authorize deductions for health insurance, life insurance, thrift savings, U.S. Government Savings Bonds, credit union accounts, personal savings bank, etc. (See [Section 7, Federal Employment Benefits.](#))

2.5 PAYCHECKS AND PAY PERIODS

As of January 1, 1999, the Administrative Office required all employees to have their payroll deposited directly into the account of their choosing. Employees sign up for Direct Deposit using form FMS 11-92 which is available from the J-Net or Personnel. The Personnel Department will forward the form to the Administrative Office for processing. Electronic deposits are made from Washington, DC to the designated account every other Thursday night with the funds being available to the employee the next day.

Payroll stubs or earning statements are available electronically via HRMIS, the federal judiciary's human resources program. The AO no longer mails the employee's earning statement to the court.

Employees are cautioned to review their earnings statements carefully and notify Personnel of any overpayment or missed deduction. Employees are responsible for paying back any money owed to the government even if the error was not the fault of the employee.

2.6 OFFICE HOURS AND LEGAL HOLIDAYS

2.6.1 WORKING HOURS

Full-time employees must work a 40-hour work week, which is generally 8 hours per day. Employees are allowed 30 minutes each work day for their lunch, which is in

addition to their scheduled work hours, thus, unless on an approved flex schedule, an employee must be present in the office 8 ½ hours. Public office hours are from 8:30 A.M. to 5:00 P.M., Monday through Friday.

All employees are required to be at their assigned work stations timely each working day. Employees are also expected to return and resume work promptly at the end of their lunch period.

A flexible work schedule or an alternative work schedule (AWS) is an option for employees, depending on the duties and responsibilities of the position, the needs of the particular unit, and the overall good of the court. Authorization of flextime or AWS in any individual case is at the discretion of the employee's supervisor and the Clerk.

2.6.2 INCLEMENT WEATHER

In the event of inclement weather, employees are directed to call toll-free **(866) 419-5695** or locally, **(617) 748-5314** or **(508)770-8944** for information regarding the Court's opening and/or closing. The Court may excuse or release employees when extreme conditions exist.

Any employee who has been provided government equipment and/or granted remote access to the Court's databases is expected to work remotely during a weather emergency or any emergency situation that does not directly impact him/her. These employees will not be granted administrative leave. If an employee is technically able to work² but chooses not to work at this time, then he/she may use annual leave or other appropriate leave.

Any employee who believes he/she cannot commute safely between his/her home and place of work due to severe weather or other emergency may use either annual leave or other appropriate leave to cover the time off. He/she is still required to notify their supervisor of this decision.

2.6.3 TIMEKEEPING

Accurate recording of time worked is the responsibility of every employee. Federal laws require this Court to keep an accurate record of time worked in order to calculate

² Employees who are technically unable to work during an emergency will not be penalized but must contact the Court's Systems Department in an effort to resolve the technical problem.

employee pay and benefits. Time worked is all the time actually spent on the job performing assigned duties.

Employees should accurately record the time they begin and end their work day on the Sign In/Sign Out sheets³ provided. Compensatory time must always be approved, in writing, by an employee's supervisor and the Clerk or Chief Deputy Clerk before it is performed and it can be earned in one-half (½) hour increments.

Altering, falsifying, tampering with time records, or recording time on another employee's time record may result in disciplinary action, up to and including termination of employment.

If corrections or modifications are made to the time sheet or leave slip, both the employee and the supervisor must verify the accuracy of the changes by initialing the time record.

2.6.4 LEGAL HOLIDAYS

The following legal holidays are observed without charge against an employee's leave:

Holiday	Day/Date Observed
New Year's Day	January 1
Martin Luther King's Birthday	Third Monday in January
Washington's Birthday	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Columbus Day	Second Monday in October
Veterans Day	November 11
Thanksgiving	Fourth Thursday in November
Christmas Day	December 25

Note: If a holiday occurs on a Saturday, it will be observed on the preceding Friday; if it occurs on a Sunday, it will be observed on the following Monday.

³ Attendance may be recorded electronically using ELMO or a paper Sign In/Out Sheet.

Unless the Court directs that the office be closed in observance of a state or local holiday, those days are considered workdays. Absences on such days will generally be charged against annual, or sick leave, as applicable.

2.6.5 RELIGIOUS HOLIDAYS

An employee who desires to observe a religious holiday other than those designated as legal holidays must request leave at least three days in advance.

Note: There are special rules regarding the availability of compensatory time for employees whose personal religious beliefs require absence from work. Contact the Personnel Department with any questions.

As required by 5 U.S.C. § 5550, an employee whose personal religious beliefs require abstention from work during recurring or occasional periods of time may elect to engage in compensatory overtime work for time used to meet those religious requirements. To the extent that such schedule modifications do not interfere with the efficient accomplishment of the Court's operation, the Clerk will allow the employee to work compensatory overtime on an hour-for-hour basis and will grant compensatory time off for religious observances when requested. The employee may work this compensatory overtime before or after the grant of compensatory time off for religious observances. The grant of compensatory time off must be repaid within a reasonable amount of time, which under normal circumstances should not exceed 60 days.

2.7 TELEWORK

The benefits of telecommuting are numerous and multi-faceted. Primarily, it serves as a powerful tool to increase certain workers' productivity, morale, and overall job satisfaction. The Court has made Telework available to select employees whose position and tasks may be performed remotely. It should be noted however that Telework is not a right. Not all employees are suitable candidates for telework. For more information about Teleworking, consult the Court's [Telework Policy](#) found in [Appendix 5](#).

2.8 LEAVE POLICIES

2.8.1 ANNUAL LEAVE

Full-time employees earn and are credited with annual leave according to their number of years in federal service, as follows:

- Less than three years of service: four hours for each full bi-weekly pay period. TOTAL: 104 hours or 13 days per year.

- More than three but less than 15 years of service: six hours for each full pay period. Exception: accrual for the last full bi-weekly pay period only in the calendar year will be 10 hours. TOTAL: 160 hours or 20 days per year.
- More than 15 years of service: eight hours for each full bi-weekly pay period. TOTAL: 208 hours or 26 days per year.

When one enters on duty with this Court, no leave is earned until a full pay period is completed. Credit is not given for partial completion of a pay period. From that time forward, annual leave is earned from the beginning of the first complete pay period of the calendar year to the beginning of the first complete pay period of the following calendar year.

"Accumulated leave" refers to unused annual leave remaining and credited to the employee at the beginning of the leave year. An employee may have no more than 240 hours (30 days) accumulated leave available as a balance at the beginning of a regular leave year.

Any accumulated annual leave in excess of that amount will be lost unless restored by the Clerk. In order for annual leave to be restored, an employee should make a written request and submit it to the Clerk by the third pay period prior to the end of the leave year (mid-November, usually). Before restoring annual leave, the approving authority must determine from the employee's written statement if one of the following causes or conditions exist:

- An administrative error has been made;
- Urgent public business prevented the taking of leave; or
- Leave was not taken due to illness.

With respect to the above, leave must have been applied for, approved in advance and scheduled.

If approved, the restored annual leave must be used within two years of the date it was restored. Any restored leave unused at the end of this time period is forfeited with no further right to restoration. Annual leave is chargeable in increments of one-half hour.

Employees must request approval of annual leave in advance, through submission of an electronic request through the Court's Electronic Leave Management Organizer or ELMO program. Supervisors may approve or deny leave and notify employees of their decision also through this program. It should be noted that approval of annual leave is not automatic. Leave will be granted and scheduled with first consideration given to the

operating requirements of the Clerk's Office. Failure to submit a leave request to obtain prior approval for leave taken may result in the unauthorized absence being charged to leave without pay.

Annual leave or sick leave will not be advanced except under extraordinary circumstances and only with the express approval of the Clerk. Prior to taking any leave, employees must have accumulated a sufficient leave balance to cover the time requested.

Upon leaving employment with the court, payment for any outstanding annual leave will be forwarded directly to the employee by the Administrative Office.

2.8.2 SICK LEAVE

Sick leave may be granted for the following reasons:

- Medical, dental or optical examination or treatment, for self or immediate family member;
- Sickness, injury or pregnancy and confinement;
- Care of an immediate family member who is ill, or afflicted with a contagious disease; or
- Presence would jeopardize the health of others because of exposure to a contagious disease.

In accordance with Public Law (103 – 388) effective December 2, 1994, 40 hours of sick leave may be used to give care or otherwise attend to a family member having an illness, injury or other condition which, if an employee had such a condition, would justify the use of sick leave by such an employee; and to make funeral arrangements or to attend the funeral of a family member.

Effective December 2, 1994, Public Law (103 – 388) allows an additional 64 hours of sick leave to be used in a year, but only to the extent the use of such additional hours does not cause the amount of sick leave to the employee's credit to fall below 80 hours.

The definition of a family member for this purpose is:

- Spouse and parents thereof;
- Children, including adopted children and spouses thereof;
- Parents;
- Brothers and sisters, and spouses thereof; and

- Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Note: Also allowed on December 2, 1994 is the use of 40 hours + additional 64 hours sick leave to make funeral arrangements/attend funeral of a family member. This is pro-rated for a part-time employee.

2.8.3 SICK LEAVE POLICY

The policies of the Clerk's office governing sick leave are as follows:

The minimum request for sick leave is one-half hour;

When sickness occurs during a period of annual leave, the period of illness may be charged as sick leave, and at the discretion of the court, a doctor's note verifying the occurrence of an illness may be required;

At the Clerk's discretion, sick leave may be advanced in cases of serious illness; but not in excess of 40 hours. No further advances can be made by the Clerk until the original advance is repaid.

If an employee is out sick for more than 3 consecutive days, he/she must submit a doctor's certificate or note upon their return to work. If necessary and with approval of the Clerk, a Supervisor may request a doctor's certificate for each sick leave absence regardless of duration.

All full-time employees earn four hours of sick leave per full bi-weekly pay period, a total of 13 days for each regular leave year. Any sick leave accrued but not used in a given leave year is automatically carried over into the following year. There is no limit as to the amount of sick leave that may be accumulated. Whenever an employee separates or resigns from the Court, no payment or credit is given for earned sick leave. However, in the event that the employee re-enters federal service on or after December 2, 1994, sick leave hours may be re-credited to the employee.

For employees who retire from the Court under CSRS, unused sick leave will be used in the retirement service computation, in which case the unused sick leave is converted into length of service and increases the employee's retirement benefits. Effective October 28, 2009 this benefit became available to employees retiring under FERS. From October 28, 2009 through December 31, 2013, retiring FERS-covered employees will add 50 percent of their unused sick leave at the time of retirement to their service time for the purpose of calculating their FERS annuity. FERS employees retiring on or after January 1,

2014 will add all of their unused sick leave at the time of retirement in the calculation of their FERS annuity. All employees should note that unused sick leave credit is used only in the computation of the retirement annuity benefit. Unused sick leave cannot be used to establish retirement eligibility.

2.8.4 LEAVE FOR BONE-MARROW OR ORGAN DONATION

Federal employees will be provided with up to 7 days of paid leave in a calendar year (in addition to sick or annual leave) to serve as a bone-marrow or organ donor.

2.8.5 COMPENSATORY LEAVE

As you know, there is no provision in the federal judiciary for payment for work performed in excess of an employee's regular scheduled hours, which is 40 hours per week for full-time employees. However, the Judicial Conference of the United States, the governing body of the federal court system, has authorized local court units to adopt the following compensatory time policy:

- When it is necessary for employees, either voluntarily or at management's request, to work in excess of their regularly scheduled hours or on Saturday or Sunday, compensatory leave may be granted.
- An employee must have prior written approval of their supervisor, who in turn must have authorization from the Clerk or the Chief Deputy Clerk, before compensatory leave for voluntary overtime may be granted.
- Authorization must be obtained in advance of earning compensatory leave, except in extraordinary circumstances. An extraordinary circumstance would be when a court proceeding requires the courtroom personnel to remain beyond their regularly scheduled hours.
- Requests for compensatory time for non-courtroom duties in excess of 8 hours in any one month or on 3 occasions in any one month, will prompt the personnel administrator to review with the supervisor and employee their duties and activities. Recommendations for changes if necessary will be made to the Clerk of Court.
- Authorization may only be granted to employees whose time-sheets are current and leave records are complete.

- Compensatory leave must be used within 6 months of the date it is earned or it will be forfeited automatically. Requests to use compensatory leave must be submitted and approved in the same manner as annual leave. Check the Human Resources page of Court's internal website for forms.
- Compensatory leave is earned and chargeable in increments of one-half hour and must be used prior to annual leave. Failure to obtain prior written approval for the use of compensatory leave will cause any non-sick leave used to be deducted from the employees annual leave. No exceptions will be permitted without permission of the Clerk of Court.
- Employees who work from home may not earn compensatory time without prior written approval of their supervisor. Work performed before securing this written approval cannot be credited as compensatory time.
- When an employee leaves the court, any unused compensatory leave is forfeited. In no circumstances can an employee be paid for unused compensatory leave.
- When requesting Compensatory Time, employees should use the Request for Compensatory Time Authorization form found in [Appendix 9](#).

The key items to remember are (1) that the work to be performed is necessary, (2) that it cannot be accomplished during the employee's regularly scheduled hours, (3) that it cannot wait until the next day, and (4) that the employee must have prior, written authorization to perform work outside of his or her regularly scheduled hours.

Subject to the Clerk's discretion, a limited amount of compensatory time may be granted to employees in travel status who are required to travel on a non-workday outside the district to attend required meetings, conferences or other work-related special events.

The records of accrual and disposition of Compensatory Time are administered under the same internal controls as other time, attendance and leave records.

Note: Managers and supervisors should not expect compensatory time to be given routinely for work performed at home.

2.8.6 FAMILY AND MEDICAL LEAVE ACT

Under this Act, judiciary employees covered by the present leave system, with appointments of one year or more and with at least 12 months of civilian government

service, are entitled to request 12 weeks of unpaid family and medical leave under certain circumstances:

- The birth of a son or daughter of the employee and the care of such son or daughter (within one year after birth);
- The placement of a son or daughter with the employee for adoption or foster care (within one year after placement);
- The care of a spouse, son, daughter, or parent of the employee who has a serious health condition; or
- A serious health condition of the employee that makes the employee unable to perform the essential functions of his/her position.

Under certain conditions, FMLA leave may be taken intermittently, or the employee may work under a work schedule that is reduced by the number of hours of leave taken as family and medical leave. An employee may elect to substitute sick or annual leave, as appropriate, for any unpaid leave under the FMLA. FMLA leave is in addition to other paid time off available to an employee.

2.8.6.1 JOB BENEFITS AND PROTECTION

Upon return from FMLA leave, an employee must be returned to the same position or to an "equivalent position with equivalent benefits, pay status, and other terms and condition of employment."

An employee who takes FMLA leave is entitled to maintain Federal Employee (FEHB) Health Benefits coverage. An employee may pay the employee share of the premiums on a current basis or pay upon return to work. (Note: FEHB coverage is limited to one year on leave without pay at the employee's option and expense.)

2.8.6.2 ADVANCE NOTICE AND MEDICAL CERTIFICATION

The employee must provide notice of his/her intent to take family and medical leave not less than 30 days before leave is to begin or as soon as is practicable.

An agency may request medical certification for FMLA leave taken to care for an employee's spouse, son, daughter, or parent who has a serious health condition or for the serious health condition of the employee.

2.8.7 ADMINISTRATIVE LEAVE

Occasionally, employees may be excused without being charged leave. Generally, these situations occur when normal operations of the Court are interrupted due to events beyond the control of either management or employees. The release of employees should be confined to emergencies which may include, but are not limited to: extreme weather conditions⁴, serious interruptions to public transportation service, and disasters, such as: earthquake, fire, flood or other natural phenomena which necessitate the closing of the Court in whole or in part.

Administrative Leave may also be granted for the purpose of allowing an employee to attend conferences, training sessions, seminars, or for other educational opportunities considered beneficial to both the employee and the court. The Bankruptcy Court may grant 2 hours of administrative leave for employees who donate blood during a blood drive sponsored at one of our court locations.

Officially the federal government does not authorize bereavement leave; however, this court may grant an employee up to 3 days (24 hours) of administrative leave to attend the funeral of an immediate relative or member of a spouse's family. Immediate relatives include: wife, husband, child (including step- or adopted), parent, brother, sister, son-in-law, daughter-in-law, grandchild, grandparent, brother-in-law, and sister-in-law. If additional time is needed, Annual or Sick Leave may be used. The granting of bereavement leave is within the discretion of the Clerk of Court.

The authorization of Administrative Leave is at the discretion of the Clerk and/or the Chief Deputy Clerk.

2.8.8 COURT LEAVE

All permanent and temporary employees with established tours of duty are entitled to Court Leave for jury and witness service.

Requests for Court Leave should be made in writing on an SF-71 Form to the immediate leave approving court official, and be accompanied by the court summons. Court Leave in excess of three days should be supported by a certificate of attendance, together with an itemization of all fees or other compensations received for court services.

⁴ See the Court's [Inclement Weather Policy](#) found on pg. 11 of this document.

Since you continue to be paid during your court leave, any payment for jury duty must be turned over to the financial deputy for deposit to the U.S. Treasury.

2.8.9 MILITARY LEAVE

Military leave is granted to all eligible employees (permanent, with regular tours of duty) who are ordered to report for military training or public emergencies, such as law enforcement.

Employees must be Armed Forces Reservists or members of the National Guard. Full-time employees may accrue and use 15 calendar days of military leave per fiscal year without pay loss or service credit. Part-time employees' military leave accrual is based on a percentage of hours in their administrative work schedule.

Employees may carry up to 15 days of unused military leave into the next fiscal year. A maximum of 30 days military leave may be accumulated in one fiscal year. In addition, a full-time employee is provided an additional 22 days of military leave per calendar year as a result of a call to order to active duty in support of an contingency operation as defined in Section 101(a)(13) of Title 10, United States Code. Military leave taken in excess of the maximum accrual will be charged to employees' annual leave or leave without pay. To request military leave, employees should furnish their supervisors and Personnel with a copy of their military orders submit their request for military leave in ELMO.

2.9 LEAVE WITHOUT PAY

Leave without pay (LWOP) is an approved absence in a non-pay status that may be granted at an employee's request. Extended periods of leave without pay will not be granted except in certain instances, examples of which are: fulfillment of parental or other family responsibilities; return to school to increase job effectiveness; furtherance of a program of interest to the government; and extended incapacitation due to illness or injury.

When an employee's cumulative non-pay absence meets or exceeds the pay periods scheduled work hours, annual and sick leave are not earned for that pay period. For example: each time a full-time employee accumulates 80 hours of non-pay status, he/she does not earn annual and sick leave in the pay period the 80th hour of non-pay occurs.

Extended LWOP can have an effect on leave accrual, the effective date of within-grade and within-level increases, service computation date and enrollment in the Federal Employee Health Benefits Program.

2.9.1 ABSENCE WITHOUT LEAVE (AWOL)

An absence without leave (AWOL) is an absence from duty which is not authorized or approved, or for which a leave request has been denied. It is not a disciplinary action. It does not necessarily mean that the employee has insufficient reason for requesting leave, but rather that the employee's presence is required and the reason for requesting leave is one for which approval is not mandatory.

However, AWOL can become the basis for initiating adverse action and extended AWOL can have an effect on leave accrual, the effective date of within-grade increases, the employee's service computation date and enrollment in the Federal Employee Health Benefits Program.

2.10 LAW CLERKS

Law Clerks are not covered under the Leave Act unless specifically authorized by their judge. As such they do not accrue Annual or Sick Leave during their tenure and may not be compensated for unused Annual Leave when they leave the court.

2.11 LEAVE SHARE PROGRAM

The Clerk's Office has adopted the leave transfer program authorized by the Administrative Office that permits employees to donate annual leave for the use of other employees for medical emergency situations. This program sets forth procedures under which a potential leave recipient may submit an application to the Clerk and establishes guidelines for donating leave to fellow employees.

Under this program, unused accrued annual leave of court employees may be transferred for use by other employees who need such leave because of a medical emergency.

"Medical emergency" is defined as:

A medical condition of an employee or a family member of the employee (as defined under "SICK LEAVE," § G, infra), that requires the employee to be absent from duty for a prolonged period of time (at least 24 hours), resulting in a substantial loss of income due to the unavailability of paid leave.

The program does not permit the transfer of sick leave, compensation time, or any time other than annual leave. Transferred annual leave cannot be included in any lump-sum payment due to the leave recipient upon separation. Annual leave transferred under these procedures will be available for use on a current basis or may be retroactively substituted for leave without pay or used to liquidate advanced annual or sick leave granted to an approved leave recipient in response to the personal emergency.

2.11.1 APPLICATION TO BECOME LEAVE RECIPIENT

An employee who has been affected by a medical emergency may make written application to the Clerk to become a leave recipient. If the employee is not capable of making application on his or her own behalf, another employee may make written application on his or her behalf.

Each application shall be accompanied by the following information concerning each potential leave recipient:

- The name, position title, and grade/step or classification level of the potential leave recipient;
- A brief description of the nature, severity, and anticipated duration of the medical situation affecting the potential leave recipient;
- Medical or other information to document the personal emergency; and
- Any additional information needed by the approving official.

2.11.2 APPROVAL OF APPLICATION

The Clerk shall review an application to become a leave recipient for the purpose of determining that the potential leave recipient has been affected by a medical emergency as defined above.

Before approving an application to become a leave recipient, the Clerk may request additional information or documentation. In addition the Clerk shall determine that the absence from duty without available paid leave because of the medical emergency is (or is expected to be) at least 24 hours. This does not have to be 24 consecutive hours.

In making a determination as to whether a medical emergency is likely to result in a substantial loss of income, the Clerk shall not consider factors other than whether the absence from duty without available paid leave is (or is expected to be) at least twenty-four (24) hours.

If the application is approved, the Clerk shall notify the leave recipient (or another employee who made application on behalf of the leave recipient), within 10 calendar days after the date the application was received that:

- The application has been approved; and other employees of the Clerk's Office may request the transfer of annual leave to the account of the leave recipient.
- If the application is not approved, the Clerk shall notify the applicant in writing (or another employee who made application on behalf of the potential leave recipient), within 10 days after the date the application was received that the application has not been approved; and the reasons for its disapproval.

2.11.3 DONATION OF ANNUAL LEAVE

An employee may submit a voluntary written request to the Clerk that a specified number of hours of accrued annual leave be donated from his or her annual leave account to the annual leave account of a specified leave recipient. Annual leave may be transferred only to a leave recipient employed by the federal government.

Annual leave transferred under this section may be substituted retroactively for periods of leave without pay (LWOP) or used to liquidate indebtedness for advanced annual or sick leave for the period of personal emergency for which LWOP or advanced annual or sick leave was granted.

It is the responsibility of the Clerk to maintain accurate leave records of both the leave donor and leave recipient and to document all phases of the leave transfer.

2.11.4 LIMITATIONS ON DONATION OF ANNUAL LEAVE

An employee may not donate leave to his or her immediate supervisor. However, a supervisor may donate leave to employees under his or her immediate supervision.

2.11.5 USE OF TRANSFERRED ANNUAL LEAVE

A leave recipient may use annual leave transferred to his or her annual leave account under this program in the same manner and for the same purposes as if he or she had accrued the annual leave within the normal course of employment. However, annual leave that accrues to the account of the leave recipient shall be used before any transferred annual leave.

Transferred annual leave may accumulate without regard to the limitation imposed on annual leave earned by the employee.

Transferred annual leave may not be:

- Transferred to another leave recipient;
- Included in a lump-sum payment upon retirement;
- Made available for credit under 5. U.S.C. 6306 upon re-employment by a Federal agency.

2.11.6 TERMINATION OF PERSONAL EMERGENCY

The medical emergency affecting a leave recipient shall terminate:

- When the leave recipient's employment is terminated by the Court;
- At the end of the bi-weekly pay period in which the recipient's approving official receives written notification from the recipient (or his/her personal representative) that the recipient is no longer affected by a medical emergency;
- At the end of the bi-weekly pay period in which the approving official determines, after written notice and opportunity for the recipient (or personal representative) to respond orally or in writing, that the recipient is no longer affected by a medical emergency; or
- At the end of the bi-weekly pay period in which the Clerk receives notice that the recipient's application for disability retirement has been approved.

The Clerk shall continuously monitor the status of the medical emergency affecting the leave recipient to ensure that the leave recipient continues to be affected by a medical emergency. If administratively feasible (as determined by the Clerk), unused, donated leave may be transferred to the annual leave accounts of leave donors currently employed by the court on the date the medical emergency terminates.

The amount of unused donated annual leave to be restored to each leave donor shall be determined in an equitable manner by the Clerk.

2.12 PROHIBITION OF COERCION

An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right such employee may have with respect to donating, receiving, or using annual leave under this program;

For the purpose of the above paragraph, the terms "intimidate, threaten, or coerce" include promising to confer or conferring any benefit (such as an appointment or promotion or compensation) or affecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation). Violation of this will be considered a serious breach of office discipline and ethics and will be subject to immediate and severe disciplinary action.

3 CONDITIONS OF EMPLOYMENT PERSONNEL SELECTION

3.1 PERSONNEL SELECTION

The Clerk of Court is appointed by the judges to perform administrative duties. All other employees are appointed by the Clerk of Court and are subject to removal by the Clerk with Court approval. The determination as to whether a person meets the specified qualifications for selection to a particular position is made in the first instance by the Court's Personnel Specialist. The decision as to who will be hired, promoted, transferred or terminated is the Clerk's.

3.2 RESTRICTIONS ON EMPLOYMENT

No person who is related to any judge of the court may be employed in any office of that court.

3.3 INTRODUCTORY PROBATIONARY PERIOD

The Introductory Probationary Period is intended to give new employees the opportunity to demonstrate their ability to achieve a satisfactory level of performance and to determine whether the new position meets their expectations. The U.S. Bankruptcy Court uses this period to evaluate employee capabilities, work habits and overall performance. Either the employee or the Bankruptcy Court may end the employment relationship at will at any time during or after the probationary period, with or without cause or advance notice.

All new and rehired employees work on an introductory probationary basis for the first 180 calendar days after their date of hire. If the appropriate supervisory personnel feel more time is necessary, the Introductory Probationary Period may be extended up to an additional 180 calendar days.

Upon satisfactory completion of the Initial Introductory Probationary Period, employees enter the "regular" employment classification. During the Initial Introductory Period, new employees are eligible for all government benefits.

3.4 SECONDARY PROBATIONARY PERIOD

Secondary Probationary Periods apply to employees who are promoted or transferred to positions that are significantly different from those previously held. This gives employees a chance to prove themselves in a new job assignment. No notice other than what is stated in this Personnel Manual needs to be given to begin the Secondary Probationary Period.

Employees moving to new positions enter the Secondary Probationary Period of 180 days even though they have already fully completed the introductory probationary period which followed their initial employment. During this time the employee's performance in their new post is closely monitored with the understanding that the employee will be removed from the position if he/she proves unable to successfully carry out the new responsibilities successfully.

In cases of promotions or transfers within the Bankruptcy Court, an employee who, in the sole judgment of management, is not successful in the new position can be removed from that assignment at any time during the secondary probationary period. If this occurs, the employee may be allowed to return to his or her former job or to a comparable job for which the employee is qualified, depending on the availability of such positions and the court's needs.

Employment status is not changed during the secondary probationary period which results from a promotion or transfer within the Court.

3.5 CODE OF CONDUCT FOR JUDICIAL EMPLOYEES

Employees of the federal Judiciary are expected to observe high standards of conduct so that the integrity and independence of the Judiciary are preserved and the judicial employee's office reflects a devotion to serving the public. As Judicial employees, they must abide by the Code of Conduct for Judicial Employees establishing standards and guidance on issues of integrity, independence, impropriety, conflicts of interest, outside activities, nepotism, political activity and the appearance of impropriety. The full text of the [Code of Conduct](#) is available on the [J-Net](#), please note some of the pertinent sections below:

3.6 PRIVACY AND CONFIDENTIALITY

One of the most important obligations of judicial employees is to ensure that nonpublic information learned in the course of employment is kept confidential. In the performance of job duties, employees may have access to files, records, draft materials, and conversations that are, under the Code of Conduct for Judicial Employees or by practice of the court, confidential.

Confidential information means information received in the course of judicial duties that is not public and is not authorized to be made public. This includes information received by the court pursuant to a protective order under seal; expressly marked or designated by a judge to be kept confidential; relating to the deliberative processes of the court or

an individual judge and records or data protected under the Privacy Act e.g., social security numbers, names of minor children or account numbers. See [Canon 3D of the Code](#).

As a general practice, employees should refrain from discussing specific cases outside of the office even if the case and/or information discussed is not confidential. In addition, employees should not:

- disclose confidential information received in the course of official duties, except as required in the performance of such duties;
- employ such information for personal gain; and
- comment on the merits of a pending or impending action.

Note: Talking to friends about a pending case could fall within these prohibitions.

3.6.1 PRACTICE OF LAW

The Clerk and his deputies are prohibited from practicing law in any court of the United States. See [Canon 4 \(D\)](#) of the [Code of Conduct](#) for employees of the Judiciary.

3.6.2 POLITICAL ACTIVITY

The Hatch Act, incorporated in 18 U.S. C., Chapter 29, regulates the participation of the employees of the Executive Branch of the Government in certain types of partisan political activities. Although the Hatch Act is not applicable to the Judicial Branch, the Judicial Conference adopted its intent in a resolution at its September 1943 meeting.

[Canon 5](#) of the Code of Conduct for employees of the Judiciary governs partisan and nonpartisan political activity and can be found in [Appendix 1](#) of this document.

3.6.3 SOCIAL MEDIA

Use of social media raises ethical, security, and privacy concerns for courts and court employees. The ability to communicate immediately with exponential numbers of people – but with limited ability to effectively control or retrieve that communication – has increased traditional concerns regarding employee communications. Unlike other forms of communication, participation in social media offers everyone the opportunity to publish their thoughts; however, not everyone may be judicious about what they publish. User entries on blogs, wikis or any other form of user-generated media can never truly be erased or deleted. The ability to preserve and replicate an Internet message or image for many years exacerbates the potential risks. Due to perceived anonymity, an employee

may engage in conduct online that the employee might refrain from in person, without understanding that online communications may be traced to a particular user, or the employee may not be fully aware of the ethical implications of social media given the relative newness of these online activities. The Court has two social media policies, one for Court employees and the other specifically for law clerks. These policies may be found in [Appendix 2](#) and [Appendix 3](#) of this document.

3.7 OUTSIDE EMPLOYMENT

Outside employment is permissible only insofar as it does not interfere in any way with an employee's function in the office, it does not in any way pose a potential conflict of interest or possible embarrassment to the Clerk's Office or to the Court. Immediately upon obtaining such outside employment, an employee must advise the Clerk in writing. If doubt exists as to whether a particular job would be inappropriate, the Clerk should be consulted first, prior to obtaining outside employment. Employees must resign from any position that fails to meet the standards in this Personnel Manual and/or the Code of Conduct.

Note: If there are any questions as to the permissibility of certain actions or activities, please contact the Clerk.

3.8 PERFORMANCE REVIEW PROCESS

Employee performance reviews shall be conducted semi-annually for developmental range employees and annually for full performance employees. Probationary employees may be evaluated more frequently. The performance review process focuses on continuous feedback, both formal and informal. Employees are provided ample notice of performance standards, the evaluation process, and their performance evaluation dates.

The review for employees in the Full Performance Range (steps 25–60) is typically a year after they received their last promotion or step increase (referred to as the last equivalent increase date or their Within Grade Increase date (WGI)). Default steps are awarded on the WGI date.

The supervisor and employee will thoroughly review the completed performance evaluation. Disputes and/or conflicts will be settled at this time. There is no appeal process for the performance evaluation. Adverse action rights apply only in the situation where an employee is rated as Unacceptable. Each completed performance review will be signed and dated by both parties.

Note: Signing the Review does not mean the employee agrees with its content. By signing the review, the employee is only acknowledging that he or she has received the review and that they have read it.

3.9 PERFORMANCE IMPROVEMENT PLANS

In the instance where the employee's Compensation Rating is Unacceptable or the Performance rating in any one category is rated as Fair or Needs Improvement, a Performance Improvement Plan will be developed by the supervisor and employee. All plans will require on-going discussions between the supervisor and employee as the supervisor monitors the plan. In the event the employee fails to improve their performance within a reasonable time, adverse action may be pursued.

Note: If a performance problem arises at any time, a supervisor may choose to help the employee by developing and implementing a Performance Improvement Plan; he/she does not have to wait until the annual review.

3.10 APPEAL OR REVIEW

After meeting with the employee and the employee has had an opportunity to make comments on their review, the Appraisal is forwarded to the Clerk of Court for signature. Adjustments to the performance ratings may be made at this time and at the discretion of the Clerk of Court. Performance ratings are final once signed by the Clerk of Court and are not subject to further review.

The awarding of default and discretionary steps is at the discretion of the Clerk of Court and is not subject to further review.

3.11 PROMOTIONS

The general policy of the court is to promote from within whenever possible so long as doing so will most satisfactorily fulfill the needs of the court. Selection for promotion of qualified employees will be made without regard to race, color, religion, sex, age or national origin. The most qualified applicant in terms of overall knowledge, background, temperament and perceived ability will be chosen. Selection decisions are based upon work performance, positive attitude, loyalty and teamwork. Seniority and tenure play minor secondary roles in selection for promotion. The leave record of the employee will also be considered. Ultimately all selection decisions are at the discretion of the Clerk.

Each position in the court has a range of pay grades or pay levels set by the Administrative Office. An employee may be promoted and advanced to a higher pay

grade/level within this set range. Advancement to a higher grade is not automatic. An employee may also be promoted by applying for and being selected for a new position at a higher grade range and accepting changes in duties or responsibilities. For a promotion to occur, the Clerk must submit an approved, promotion request to the Human Resources Division in Washington.

3.12 RESIGNATION AND OR SEPARATION

- **Notice:** It will be appreciated if an employee intending to resign from a position gives a minimum of two weeks' notice. This will facilitate recruitment and training of a replacement. An employee will never be penalized for announcing an intention to resign.

A resignation must be in writing and should state the reasons for the action. This will be important if inquiries are received at a later date about the employee from a prospective employer.

- **Return of Court Goods:** Government identification cards, keys, building access cards, garage passes, and all other assigned court equipment either on or off the premises *must* be returned to either the department that issued the item(s), or to the Personnel Department or to the Clerk before the last day of actual duty in the office. Subject to Section 1.28.5 herein, court personnel are responsible for repairing, replacing or paying for any government equipment or items that are returned damaged or not returned at all. Failure to return court property may be considered theft of government property and the appropriate authorities will be notified.
- **Exit Interview:** Prior to the designated time of separation from this Court the departing employee will be contacted by the Personnel Department to set up a convenient time for an exit interview. Should distance prohibit the employee from being interviewed in person, an optional written exit interview questionnaire will be provided.

This Court is always interested in improving its organization. Information obtained from interviews could help prevent future problems, better the selection process, identify training needs and improve working conditions. Exit interviews also provide an opportunity to reclaim employer-owned property and settle any concerns between the employee and the employer.

Information obtained during an exit interview will remain confidential; no employee will be penalized for stating their honest views during such an interview.

- **Accrued Leave:** The Leave Act does not authorize monetary payment for accrued compensatory time or sick leave. An employee transferring to another federal agency will maintain the sick and annual leave balances accrued at the time the separation occurs. Compensatory time is not transferable.

An employee leaving federal service will be paid at his or her regular salary rate for the amount of accrued and unused annual leave earned up to the date of separation. Sick leave balance remains on record with the Administrative Office and should the employee return to any federal agency, the leave will be restored.

- **Temporary Continuation of Health Benefits:** Coverage in the Federal Employee Health Benefits Program (FEHB) ends on the last day of the pay period in which separation from federal service occurs. There is a 31-day temporary extension of coverage at no cost for conversion to non-group coverage.

Employees separating from the federal service, voluntarily or involuntarily, unless the involuntary separation is due to gross misconduct, may continue FEHB coverage temporarily for up to 18 months after separation. The employee may select any plan in the FEHB program in which they are eligible to enroll to continue their coverage. If continuing coverage is desired, the full amount of the premium (both the employee's and government shares) plus a 2% administrative charge must be paid.

Enrollment charges begin on the day after the 31-day period of free coverage ends. If coverage is continued to the end of the 18-month period, the employee will have another 31-day temporary extension of coverage for conversion to a non-group contract.

Soon after leaving the Court, the separating employee will receive an informational packet and FEHB enrollment form from the Personnel Department. The FEHB enrollment form *must* be returned to the Personnel Department of this Court for processing within 60 days of the date of resignation. If there are any questions or if anyone needs further information, please call the Personnel Department for assistance.

Ordinarily, an employee transferring within the federal service will retain the same health benefits coverage and/or life insurance; however, local HMOs may not provide coverage in the employee's new location so a new provider would have to be selected.

- **Retirement Fund Refunds:** The Personnel Department will provide an application for refund of monies paid into the Retirement Fund, however, if an employee transfers to another federal agency, the retirement contributions will be transferred as well.
- **Unemployment Compensation:** Employees separated from their positions will receive an Unemployment Compensation Notice from the Personnel Department. In turn, the former employee must contact their local state employment agency to obtain information regarding eligibility requirements and benefit information.

4 ADVERSE ACTIONS

An adverse or disciplinary action may be taken to alter unacceptable performance and/or behavior by an employee. It shall be applied fairly and consistently as a positive and constructive means of improving order and efficiency in the court. Except in cases of demotion or discharge, where the action taken is obviously punitive, disciplinary action should be constructive and delivered in a positive manner. All personnel actions are confidential unless the employee chooses to make the action public.

Any adverse action that is taken need not be progressive, and is at the sole discretion of the Clerk of Court.

4.1 FORMS OF ADVERSE ACTION

There are six forms of adverse action that may be applied in this office:

- Oral warning;
- Written warning;
- Demotion;
- Step Increase is Withheld;
- Written warning with a suspension without pay; and
- Dismissal.

The following list identifies examples of instances when discipline of an employee may be imposed:

- Abandonment of position;
- Absence from duty without leave;
- Abuse of leave privileges; excessive tardiness;
- Below-standard work performance;
- Discourteous treatment of the public or of other employees;
- Drinking intoxicating beverages or being intoxicated on Federal property or during working hours;
- Fraud in securing appointment or promotion;
- Improper political activity or violation of the Hatch Act (18 USC § 94, et seq);
- Inability to perform duties assigned;
- Infringement of personal affairs on office business;
- Insubordination;

- Misuse of federal property, funds, or records;
- Misuse/abuse of computer software/hardware, or the internet in violation of office policy;
- Neglect of duty;
- Unauthorized outside employment;
- Intentional violation of established office rules and procedures;
- Violation of penal code;
- Willful deceit;
- Other acts which are incompatible with or reflect discredit upon the office.

This list does not exhaust all possible grounds for disciplinary action, nor does it imply that the office is obligated to take formal disciplinary action if an employee commits any of these offenses. It merely represents the types of offenses for which disciplinary action may be taken.

4.1.1 ORAL WARNINGS

A corrective warning may be given in response to relatively less serious infractions. Such a reprimand will not affect the employee's current pay. At the discretion of the supervisor/manager, and depending upon the infraction, this warning may be documented and placed in the employee's personnel folder.

The employee shall be informed as to the exact nature of the problem and encouraged to alter their behavior. The employee can review his/her personnel file upon request. The employee must be notified in writing of anything unfavorable placed in the file. At the request of the employee, and if no further corrective action was required within a 12-month period of time, the copy of the written corrective reprimand may be removed from the employee's file.

4.1.2 WRITTEN WARNING

A written warning shall be issued in response to either a repeated or serious infraction and placed in the employee's personnel file. This warning shall include a statement as to the exact nature of the problem and, if appropriate, prior warnings shall be cited. At the request of the employee, and if no further corrective action was required within a 12-month period of time, the copy of the written corrective reprimand may be removed from the employee's file.

4.1.3 DEMOTION

A demotion is a change in grade which may result in a reduction in pay within the position to which the employee is assigned or in a position to which the employee has been reassigned.

4.1.4 STEP INCREASE IS WITHHELD

Employees who consistently demonstrate below standard work performance may have their default step increase withheld until performance improves or further action is taken.

4.1.5 WRITTEN WARNING WITH SUSPENSION WITHOUT PAY

For more serious infractions, a Disciplinary Suspension may be imposed on the employee, and this suspension will affect the employee's current pay. Such a suspension may result from a serious violation of office policies, rules, etc., but the violation may not be so serious as to necessarily require dismissal. The imposition of, and the length of, any suspension is at the discretion of the Clerk.

Copies of papers documenting Disciplinary Suspension shall be placed permanently in the employee's file.

4.1.6 DISMISSAL

An employee may be dismissed, without prior disciplinary action, if grounds for disciplinary action are present, the dismissal is part of a general reduction in force, or if, in the opinion of the Clerk, such dismissal is in the best interests of the Clerk's Office. A Dismissal Action is not subject to the grievance procedure as set forth in this manual.

Termination must be effected by the Clerk, subject to court approval.

4.2 ADVERSE ACTION – WHAT TO EXPECT

If adverse action is taken against an employee, they may expect to receive:

- A Notice of the Action including a description of it, the reasons for it and the proposed effective day of the action.
- An Opportunity to respond or contest the action within four (4) business days of the Notice.

- An Informal Hearing, if requested in the response, with the Clerk of Court as opportunity to correct factual inaccuracies as to the record and raise any mitigating circumstances which may exist.
- A Notice of Final Action taken subsequent to the informal hearing will include the reasons for the action.

4.3 REVIEW OF ADVERSE ACTION

Final Actions taken as a result of an Adverse Action in which an informal hearing was held are not subject to further review and are not subject to the Court's Grievance Procedure.

5 GRIEVANCES

A grievance is an employee complaint involving a phase of employment, working conditions, or working relationships wherein the employee believes he or she has received unfair treatment. Grievances address matters relating to employee-supervisor relationships, duty assignments not affecting job classification, shifts in job location assignments, working facilities and conditions, policies for granting leave and similar matters. Actions specifically excluded from the grievance process include those related to furloughs, performance management or those more appropriately addressed through the Employment Dispute Resolution (EDR) Plan.

The purposes of the grievance procedure are:

- To promote favorable employer-employee relations by resolving grievances and preventing similar complaints;
- To assure fair and equitable treatment of all employees; and,
- To promote harmonious working relationships among all levels of employees.

Every full-time, salaried employee of the court beyond Initial Probationary Employment status shall have the right to initiate a grievance under this procedure on matters affecting the terms and conditions of employment over which a supervisor at any level of supervision within the court has partial or complete responsibility unless specifically excepted.

Officers, supervisors, and employees of this court are prohibited from denying an employee the opportunity to present his or her grievance and from subjecting to threats, duress, harassment or any overt or covert acts of reprisal an employee who has filed, or is about to file, a grievance.

Most problems and complaints can be settled if the employee will promptly, informally, and amicably discuss them with his or her immediate supervisor. Try to arrange such an informal meeting with your supervisor before initiating a formal grievance action. If an informal approach proves ineffective, the formal grievance procedure may then be invoked.

Note: Employee complaints based on race, gender/sex (including sexual harassment), color, national origin, religion, age, or disability are **NOT** addressed through the Grievance procedure but are more appropriately addressed by the Court's Employment Dispute Resolution ([EDR](#)) Plan found in [Appendix 7](#). Anyone needing assistance in

determining whether the Grievance Procedure or EDR Plan applies to their complaint may consult with the Personnel Department.

5.1 GRIEVANCE PROCEDURES

5.1.1 STEP ONE: SUBMISSION OF GRIEVANCE FORM

If efforts to settle your complaint informally have not succeeded, you may file a formal grievance by completing a [Grievance Form Found in Appendix 6](#). File the form, without undue delay, with your immediate supervisor under whom you serve. The statement of your grievance as it appears on this form will be the basis of any future reviews of your grievance. Give two copies of the completed form to your manager or the Chief Deputy Clerk, if applicable.

If the situation warrants, your manager may choose to conduct separate interviews with you and any other parties, or witnesses in the matter. You will have the right to be represented at your interview by the person of your choice. The interview(s) will be recorded, and a copy of the tape(s) provided to you at no charge. Transcripts will be prepared only upon your request, and at your expense. Preparation of transcripts will extend time limits only upon written approval by the Clerk.

Your manager/Chief Deputy will return a decision in writing within 5 business days of the filing of the grievance, or within 10 days if any interviews have been conducted. (See [Appendix 6](#))

5.1.2 STEP TWO: APPEAL TO CLERK OF COURT

You may appeal the manager's/chief deputy's decision within 5 business days of its rendering, by resubmitting the original Grievance Form to the Clerk of Court. The Clerk or his designated representative will conduct a thorough review of the grievance, including a discussion with you of the matter, and will render a written decision within 5 days of receipt of the appeal. The Clerk's decision is final, and is not subject to further appeal or review.

6 EMPLOYEE DISPUTE RESOLUTION PLAN

6.1 GENERAL PROVISIONS

This Employment Dispute Resolution (“EDR”) Plan was approved by the Judicial Council of the First Circuit in June of 2010 and became effective in September 2010. This plan is the EDR Plan for the U.S. Bankruptcy Court for the District of Massachusetts. The purpose of the Plan is to provide court employees with a means of resolving certain issues which arise in the course of their employment. This Plan is intended to provide court employees the substantive rights and protections of the Model EDR Plan adopted by the Judicial Conference of the United States in March 2010. The Judicial Conference adopted its Model EDR Plan in response to the Congressional Accountability Act of 1995, in which legislative branch employees were provided with certain rights. The rights conferred by the Judicial Conference to employees of the judiciary are comparable to those available to legislative branch employees or to any of the rights available under various federal statutes which relate to employment matters addressed by this Plan. However, certain workplace and employment issues cannot be resolved by the courts under this Plan, since the court does not have the authority to do so.

This Plan addresses the following workplace and employment issues:

- Equal Employment Opportunity and Anti-Discrimination Rights
- Sexual Harassment
- Family and Medical Leave Rights
- Employment and Reemployment Rights of Members of the Uniformed Services
- Occupational Safety and Health Protections
- Polygraph Tests
- Employee Dispute Resolution Procedures for Claims of the Denial of the Rights Afforded Under this Plan

A complete copy of the [EDR Plan](#) and the procedures to file a complaint under the Plan are included in this manual as [Appendix 7](#) and may also be found on the Court’s internal website.

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7 FEDERAL EMPLOYMENT BENEFITS

7.1 HEALTH BENEFITS

The Federal Employees Health Benefits (FEHB) Program provides health benefits' coverage to federal employees from a number of medical plans. Employees assigned to permanent positions and Temporary Employees appointed for more than one year (at least one year and a day) are eligible to participate in any one of several health plans and options. Employees who serve in successive temporary appointments and complete one year of continuous employment, are eligible for FEHB, but there is no government contribution. Starting with the first full pay period in 2000, health insurance premiums that are deducted from an employee's paycheck will be deducted on a pre-tax basis unless an employee chooses otherwise. This pre-tax treatment will have the effect of making the employee's share of health insurance premiums fully deductible. Previously, an employee's share of health insurance premiums were deductible only to the extent that those premiums plus all other medical expenses exceeded 7.5% of adjusted gross income.

Depending upon the plan chosen, the government contributes up to 75% to defray the cost, with remaining costs borne by the employee. A new employee has 60 days from the date of their appointment to enroll in a health plan. Withholdings of health insurance premiums are deducted from each biweekly paycheck.

The actual date the [Enrollment Form \(SF-2809\)](#) is received by the Personnel Office determines the effective date of benefits coverage. Upon your submission of the SF-2809, the Personnel Department will contact the AO for start dates for your coverage.

If participation in the FEHB program is waived, the employee must wait until "Open Season" before health benefits can be obtained. At this time, non-enrolled employees may enroll in a plan and enrolled employees may change from one plan or option to another. There is no requirement to furnish satisfactory evidence of insurability with respect to initial enrollment or changes in plans or options.

If an employee separates from the court, except for reasons of gross misconduct, they are eligible for Temporary Continuation of FEHB Coverage for a period of 18 months. However, the employee must pay the entire cost of the coverage plus a 2% administrative charge. Details are available under the "[Resignation](#)" Section of this Manual.

Detailed information regarding enrollment and coverage is contained in SF2809-A, [Federal Employees Health Benefits Program](#). This booklet, along with individual health

plan brochures, is available upon request from the Personnel Department or on the J-Net.

7.2 WORK-INJURY BENEFITS

Federal employees are covered by the Federal Employees' Compensation Act. This Act provides compensation benefits to civilian employees of the United States for disability due to personal injury sustained while in the performance of duty or to employment-related disease. This Act also provides for the payment of benefits to dependents if the injury or disease causes the employee's death. Benefits cannot be paid if the injury or death is caused by willful misconduct of the employee or by the employee's intention to bring about his or her injury or death or that of another, or if intoxication is the proximate cause of the injury or death.

- Should an employee be injured while at work, it is important that the following guidelines be followed:
- Report the accident to your supervisor immediately.
- Document the circumstances of the accident while they are clear in your mind. If time permits, provide your supervisor with a written account of the accident.
- If the injury was witnessed, ask the witnesses to provide your supervisor with a written account of the accident.
- If medical attention is needed, obtain Form CA16 from your supervisor. This form authorizes medical treatment.
- Your supervisor will also provide you with Form CA-1. This form must be filled in and returned within two days to Personnel. Personnel will then complete the form and forward it to the Office of Workmen's Compensation Programs (OWCP). It is imperative that all forms be completed and filed with OWCP on a timely basis to protect your claim.

Additionally, it is the employee's responsibility to obtain supporting medical documentation from your physician regarding the extent of your injury. Any medical bills are forwarded to OWCP with a physician's statement. Once the claim is allowed by OWCP, an employee is entitled to up to 45 days disability leave. If the claim is disallowed for any reason, the employee is responsible for the time lost, viz. sick, annual or LWOP status. Additional information on these work injury benefits may be obtained on an individual basis from the Personnel Office.

7.3 FEDERAL EMPLOYEES RETIREMENT SYSTEM (FERS)

Employees hired on or after January 1, 1984 are automatically enrolled into the Federal Employees Retirement System (FERS). FERS is a retirement plan that provides benefits from three different sources: a Basic Benefit Plan, Social Security, and the Thrift Savings Plan. Two of the three parts of FERS (Social Security and Thrift Savings Plan) keep their full value even if you leave the Federal Government before retirement.

The Basic Benefit and Social Security parts of FERS require you to make contributions each pay period. The Thrift Savings Plan part of FERS is an account that is automatically set up for you. The Government puts in a contribution equal to 1% of your pay each pay period. You may make contributions of your own to the plan, up to the IRS limit. Including the automatic 1% contribution, the government will match the contribution up to 5%. Your contributions are pre-tax contributions which reduce your taxable income, much like an IRA.

Contributing to the Thrift Savings Plan is an essential and critical part of achieving an acceptable monthly retirement payment under the FERS plan.

If you are a FERS employee and you were hired after July 31, 2010, your agency has automatically enrolled you in the TSP, and 3% of your basic pay is deducted from your paycheck each pay period and deposited in your TSP account unless you have made an election to change or stop your contributions. You can make an election by following the instructions in Starting, Changing, and Stopping Your Contributions.

If you are a FERS employee and you were hired before August 1, 2010, you already have a TSP account with accruing Agency Automatic (1%) Contributions; In addition, you can make contributions to your account from your pay and receive Agency Matching Contributions. You can make a contribution election by completing Form TSP-1, Election Form, and return it to your agency. Consider contributing at least 5% of your basic pay to your TSP account so that you can receive the full amount of agency matching contributions. After you retire, you will receive a benefit check each month for the rest of your life.

Under FERS, an employee is eligible for unreduced benefits upon attaining one of the following combinations of age and service:

- Age 62 with 5 years of service;
- Age 60 with 20 years of service;

- “Minimum Retirement Age” (MRA) with 30 years of service (please see Personnel for an explanation of MRA.)

Under FERS, an employee is eligible for disability retirement at any time after eighteen months of employment. The employee must be disabled for useful and efficient service in the last position held and must not have declined a reasonable offer of a vacant position within the same agency with the same commuting area and grade or pay level as the most recent position.

Additional and extensive information may be obtained from the Personnel Department.

7.4 CIVIL SERVICE RETIREMENT SYSTEM (CSRS)

All permanent employees of the Clerk's office hired before January 1, 1984, are members of the Civil Service Retirement and Disability Fund (CSRS). This fund is the accumulation of money held in trust by the U.S. Treasury for the purpose of paying annuity, refund, and death benefits to persons entitled to them.

Civil Service Retirement is deducted from each paycheck at the rate of seven percent of the employee's gross earnings. The amount of money an employee has contributed into CSRS per pay period and per calendar year is indicated on each Statement of Earnings. The cumulative total of the amount of money contributed throughout one's court career is maintained by the Administrative Office. This information is contained in your bi-weekly employee earnings statement which is generally distributed with your paycheck.

Under CSRS, an employee is eligible for unreduced retirement benefits upon attaining one of the following combinations of age and service:

- Age 62 with 5 years of service;
- Age 60 with 20 years of service;
- Age 55 with 30 years of service;

Both age and service requirements must be met in order to qualify for unreduced retirement benefits.

Under CSRS, an employee is eligible for disability retirement at any time after five years of employment. Disability retirement eligibility requires certification by a physician as well as supporting documentation by the employee's supervisor.

If employment with the government is terminated prior to the time of eligibility for retirement benefits, an employee may elect to withdraw his or her CSRS contributions.

Within two weeks of the termination date, the Administrative Office will automatically forward to the employee's home Standard Form 2802, Application for Refund of Retirement Deductions.

Complete information regarding the Civil Service Retirement System may be obtained from the Personnel Department.

7.5 EMPLOYEES' ASSISTANCE PROGRAM

From time to time each of us is beset by personal problems. We know that many of these problems can be solved with professional assistance. In response to this need, an Employee Assistance Program has been established and is now available to all federal employees.

The EAP is a professional counseling and referral service designed to help with personal, job or family problems. It is free, voluntary and confidential.

Professional counselors are prepared to assist you with virtually any issue or problem that may arise. Some of the most common concerns are: emotional, marital, family, alcohol/other drug use, job problems, legal/financial.

Assistance is available immediately. All you need to do is contact an EAP counselor who will meet with you in a confidential setting. The counselor will: help you assess the problem; meet with family members, when needed; provide short-term counseling, when appropriate; assist you in selecting a specific resource, when necessary; follow-up to insure you receive quality assistance.

Your request for assistance, and any information that may be shared, is between you and your counselor. All EAP records are kept strictly confidential. In general, information from EAP may be released only with your prior written permission. Participation in the EAP will not jeopardize your job or career.

For information or assistance 24 hours a day, 7 days a week, call: 1-800-222-0364, or if Deaf/Hard of Hearing 1-800-439-2370.

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8 CLERK'S OFFICE STANDARDS AND PROCEDURES

8.1 APPEARANCE

As a Federal Court with extensive contact with the public, we are all called to dress and behave in a professional, dignified and respectful manner. Remember that people will judge you and the entire office by your appearance and courtesy. You made a good impression when you were hired and you should continue to look and act your best. A well-groomed and businesslike appearance is a positive reflection on you, the office, and the court. All personnel are expected to exercise sound judgment and common sense in the choice of attire. (See [Appendix 4, Dress Code Policy](#).)

8.2 PERSONAL COURTESY AND CONDUCT

Courtesy is an expression of respect. All employees of this office are expected to maintain the utmost courtesy when dealing with the bench, the bar, the public, and all fellow employees.

- If you are faced with an unpleasant situation or unreasonable request, immediately refer the matter to your supervisor or someone in authority.
- If you are unable to assist a waiting customer immediately, acknowledge his or her presence and give some indication that assistance is forthcoming.

Remember: the people you deal with and their problems are not impositions on your time. We are here to render service to the public unless a request is made which conflicts with the law or office policy.

Accordingly, the Federal Judiciary has a [Code of Conduct](#) which is applicable to all court employees. Whatever your specific duties may be, you occupy an important position with this court and within the judicial system, and your behavior and activities must not diminish or reflect poorly on that position or the judicial system. (See [Appendix 1](#))

8.3 SEXUAL HARASSMENT

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.

- Sexual harassment can occur in a variety of circumstances, including but not limited to the following:
- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

The victim of the harassment **must** inform the alleged harasser directly that the conduct is unwelcome and that it must stop. The victim should also bring the matter to the attention of top management if the harassment continues once the alleged harasser has been told to stop.

When investigating allegations of sexual harassment, the whole record is considered: the circumstances, such as the nature of the sexual advances, and the context in which the alleged incidents occurred. A determination on the allegations is made from the facts on a case-by-case basis.

8.4 CLERK'S OFFICE POLICY ON SMOKING

The General Services Administration has banned the use of tobacco products of any kind in federal buildings; therefore, **NO SMOKING** is allowed in any area of the Clerk's Office, including any private office, defined as a single person office.

Smoke Breaks are allowed, under the following conditions:

- Two smoke breaks may be taken each day, one in the morning and one in the afternoon.
- Each break should not exceed 15 minutes, including "travel time."
- Smoke break time taken must be made up by the employee, either through a commensurate reduction in the lunch hour, starting work earlier, or working later.
- Smoke breaks must be taken outside the building. There is absolutely no smoking in the building stairwells, ladies' and men's rooms or hallways. Smoking must be done in properly designated areas outside of the building.

8.5 EX PARTE COMMUNICATION

"Ex parte Communication" is generally defined as informal communication between a judge and only one side of a proceeding without the knowledge or involvement of any other party.

Except as otherwise permitted by applicable law, court employees are prohibited from having any ex parte communication or contact with any party in interest, attorney, trustee, accountant, examiner or employee of a party in interest concerning matters affecting a particular case or proceeding.

Also, except as otherwise permitted by applicable law, court employees are prohibited from having any ex parte communication or contact with the United States trustee, assistants to, and employees or agents of the United States trustee concerning matters affecting a particular case or proceeding.

It is absolutely essential that no member of the Clerk's office through inadvertence or other action be the cause of any inappropriate communication.

Except in accordance with established policy, no telephone calls are to be forwarded into chambers. Correspondence shall be opened and distributed by staff in accordance with each chambers' policy. No person shall be allowed access to chambers without prior approval from that chambers.

Prior to taking any action, if you have any questions as to a communication or contact, see your supervisor.

8.6 TELEPHONE COURTESY AND ETIQUETTE

Courtesy and helpfulness should be maintained not only in personal contacts with the public, but also over the telephone. Use the following (or an essentially similar) greeting when answering the telephone:

"Good morning/afternoon, United States Bankruptcy Court. May I help you?"

Use good judgment when placing a party on hold. Do not leave a party on hold for a long period of time without assurance that you are "still checking the information."

When transferring a call, advise the caller that the call is being transferred. Stay on the line and announce the caller when the phone is answered. Be sure that the party to whom the call is being transferred is able to assist the caller. If a telephone is ringing

at an unmanned station, you should answer it and assist the party, or take a message. No telephone should ring more than three times before being answered.

If you are faced with an unreasonable request or unpleasant situation, advise your supervisor immediately; the supervisor will take the call or provide other assistance.

8.7 QUESTIONS CONCERNING OTHER PERSONNEL

The Personnel Department is the only department authorized to furnish information relating to employees who are either presently working for the court or have worked for the court in the past. Under no circumstances should any employee provide such information. Should a personnel-related question be posed to you, you should advise the person as follows:

You are not authorized to provide information concerning other employees, and that the caller must speak with the Personnel Department for that information.

You should then put the party in contact with the Personnel Department, telephone numbers (617) 748-6620 or (617) 748-6621.

8.8 REQUESTS FOR STATISTICAL DATA

Frequently this court receives requests from the general public for statistical information on filings. The official national statistics are provided through the Administrative Office of the United States Courts (AO) and available through PACER and the U.S. Court website at www.uscourts.gov. Statistics may also be obtained from a publication entitled FEDERAL JUDICIAL WORKLOAD STATISTICS which is published on a quarterly basis by the Administrative Office in Washington DC. Copies of these publications may be ordered from:

Superintendent of Documents
U.S. Government Printing Office
Washington, DC 20402

If a party expresses dissatisfaction concerning the referral, have the party contact your supervisor, the Chief Deputy/Deputy-in-Charge or the Clerk. Raw data on filings in this district are available from the Clerk or the Chief Deputy Clerk.

8.9 RELEASING INFORMATION

Generally speaking, anything on the docket sheet is public information, so is anything bearing a "filed" stamp, except documents sealed by order of the court. If you are unsure as to how to respond to a request for a document or information, see your supervisor.

8.9.1 PRESS AND OTHER NEWS ORGANIZATIONS

All requests or inquiries from the press for information (other than general information which would be provided to any other member of the public), should be referred to the Clerk or, in his absence, to the Chief Deputy. Beyond general information, the Clerk and Chief Deputy are the only Clerk's office personnel authorized to deal with the press.

8.9.2 SUGGESTIONS

Employees are encouraged to submit suggestions designed to improve office operations. Present any suggestions you may have, either orally or in writing, to your supervisor, the Chief Deputy, Deputy-In-Charge, or the Clerk for consideration, review and possible implementation. Valuable suggestions that save time, money, or improve efficiency may merit an award.

8.9.3 CALL-IN PROCEDURE

All telephone calls reporting illness, tardiness or other absence from duty should be directed to your supervisor, personally, just as soon after your scheduled reporting time or as close to 8:30 AM as possible. In case of prolonged illness employees must contact the Chief Deputy or the Clerk.

8.9.4 LATENESS OR TARDINESS

Employees are expected to be at their work station, prepared to start their work, at the beginning of their scheduled work day. If an employee is late, that time should be made up at lunchtime, or by working later that day, or by submitting a leave slip for annual leave. Repeated or habitual lateness hurts your fellow employees and interferes with the efficient operation of the office, hence it cannot be tolerated. If uncorrected, it may lead to disciplinary action.

8.9.5 SEASONAL GIFTS, GRATUITIES, ETC.

In order to avoid embarrassment to those who wish to give or to those who wish to receive, please take note that the acceptance of any gift from a member of the public (including trustees, appraisers, auctioneers, and attorneys) is prohibited.

Gifts received will be returned or donated to a charity if given anonymously.

8.9.6 EMPLOYEE ETHICS (18 U.S.C. 154)

Title 18 USC Section 154 prohibits any employee of this court from partaking in the purchase of any item/s available for sale from an estate in bankruptcy.

- "Whoever, being a custodian, trustee, marshal, or other officer of the Court, knowingly purchases, directly or indirectly any property of the estate of which he is an officer in a case under Title 11, shall be fined not more than \$500.00, and shall forfeit his office, which shall thereupon become vacant."
- An "officer of the Court" refers to the Clerk, and all deputy clerks. Indirect purchases would include those made by a family member or other person for the court officer or case official.

The prohibition of the statute is against "purchase"; it does not make a distinction as to whether a fair price is paid or not.

Any questions regarding 18 U.S.C. S.154 should be referred to the Clerk.

9 PERSONAL USE OF GOVERNMENT EQUIPMENT AND SERVICES

Generally, Government office equipment and services are for the use of judiciary employees in their performance of official government business. Judiciary employees are permitted **limited use** of government office equipment for personal needs; personal use must not interfere with official business and should only occur during employees' non-work time and must never be at the expense of taxpayers. This privilege to use government office equipment for non-government purposes may be revoked or limited at any time by appropriate court unit officials. See [Appendix 8, Personal Use of Government Equipment and Services Policy \(Including Computers and the Internet\)](#) for the full policy.

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10 EMERGENCY PROCEDURES

The perimeter security of a courthouse or federal facility is the responsibility of the Federal Protective Service, a unit of the Department of Homeland Security. The security of the federal judiciary inside the courthouse or facility is the responsibility of the United States Marshal Service.

10.1 DURING BUSINESS HOURS

Court Security Officers (CSO) and the U.S. Marshals (USMS) are the primary source of security services to the Federal Judiciary. They are charged with the protection of federal judges, courthouse staff, visitors and physical court facilities. This includes internal perimeter security, access control, closed circuit television surveillance and alarm reporting systems. They are responsible for low-profile weapons-screening stations used at the entrances of most court facilities. These stations are designed so CSOs can identify and seize unauthorized weapons in a setting that provides protection for them while also blending aesthetically into lobby or courtroom area architecture. These stations include X-ray equipment with state-of-the-art detection software.

Any time an employee believes that there is a potentially serious security concern, he or she must notify the deputy-in-charge, the clerk and/or chief deputy at once.

For the following specific concerns, contact the Court Security Officers directly and call 911.

- **Medical Emergencies** – Call the Court Security Officers (CSOs) or the US Marshals (USMS) in the building. Some of these individuals may be qualified in first aid/CPR and are your fastest source of first aid or CPR. The CSO/USMS will respond to your location and call 911 for you.

Note: If you choose to call 911, remember to make a second call to the CSO/USMS so they will be able to direct the emergency services to your location when they arrive. Court phones are programmed to call 911 regardless of whether you dial, 7-1 or just 911.

- **Threats to Safety, Fire or other Emergencies (Suspicious Packages, Bomb Threats etc.)** – Push/Pull the emergency call buttons located in the courtrooms, chambers or clerk's office space. If the emergency button is not accessible, call the Court Security Officers or the US Marshals in the building. The CSO/USMS will respond to your location. Speed dials have been programmed on the Court phones.

- **Fire** – Follow the directions given over the building’s fire safety system, if any, or if you wish, evacuate the building using the closest stairwell that is open and report to the predetermined assembly area. Employees should always feel free to evacuate during any emergency, regardless of what the building’s fire safety system may be recommending.

Note: If you choose to call 911, remember to make a second call to the CSO/USMS so they will be able to direct the emergency services to your location when they arrive.

In Boston: 911

(617) 748-6686 (CSO Emergency)

(617) 748-3309; 3310; 3311 (CSO office/station/break room)

In Springfield: 911

(413) 504-1058 CSO office)

(413) 785-6916 (U.S. Marshal)

In Worcester: 911

(508) 793-0129 or (508) 368-7310 (CSO office)

(508) 793-0580 (Federal Police)

Note: Telephones are programmed to contact local emergency services when 911 or 71-911 is dialed.

10.2 AFTER HOURS – CALL THE MEGACENTER 877-437-7411

The Federal Protective Service (FPS) has a communication and dispatch network called the MegaCenter. The MegaCenter provides emergency communications in response to emergencies related to federal facilities.

The MegaCenter can:

- Handle police communications and dispatching.
- Monitor security alarms, such as intrusion, duress or hold-up alarms.
- Communicate during elevator emergencies.
- Monitor alarms for environmental and building hazards, such as temperature or pressure.
- Back up regional radio dispatches.

Calls to the MegaCenter from Massachusetts are answered in Philadelphia, PA. This is also the response and dispatch center for a number of facilities. If an emergency occurs

after hours in a federal facility, call the MegaCenter, describe the nature of the emergency and your location. They will contact local law enforcement or emergency services and dispatch them to your location. Remember, you may always call 911 as well.

Note: If the after-hours emergency requires a quick response, it is highly recommended that you call 911 and rely on local response from police or other emergency service. Make a second call if you can to the MegaCenter so services can be coordinated.

10.3 BOMB THREAT

Any employee receiving a bomb threat should attempt to have the caller give the message to a supervisor. If the caller refuses to be transferred to another party, the employee receiving the call should remain calm, courteous, listen, and should not interrupt the caller. Immediately request the nearest person, by note or pre-arranged signal, to advise the Clerk or Chief Deputy/Deputy-In-Charge. Write out the caller's message in its entirety. If the caller seems agreeable to further conversation, ask questions like:

- Where is the bomb located? What building? City? State?
- Has the bomb been placed in the open?
- How is it disguised?
- How is it concealed?
- What kind of bomb is it?
- How did it get into the building?
- Who is responsible for placing the bomb in the building?

10.4 FIRE

If you discover a fire proceed immediately to the nearest building fire alarm box and activate the alarm. Also, do not hesitate to telephone the city fire department by dialing 911. Always be sure to give the exact location of the fire to avoid loss of time. The fire department would rather turn out for a very small fire than have you delay and give the fire an opportunity to spread. The first few minutes are vital.

10.4.1 FIRE PREVENTION RULES

The following are the ground rules for fire prevention in this office:

- Maintain good housekeeping in all areas of the building, as this is one of the most effective means of preventing fire.

- Bring to the attention of your supervisor any apparent fire or safety hazard existing in the building.
- Deposit all trash in receptacles provided for that purpose. when trash is excessive, have the building manager notified for immediate removal.
- Clear and adequate passageways must be maintained at all times within the offices and in building corridors and stairs.
- Obey "no smoking" signs.

10.5 EVACUATION AND SECURITY

In the event of a fire, bomb threat or other emergency that requires the evacuation of the building, please use common sense and proceed cautiously. Follow the procedures outlined in the Occupant Emergency Plan for your location. (Plans may be found on the Court's internal website.)

APPENDIX

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APPENDIX 1

CODE OF CONDUCT FOR JUDICIAL EMPLOYEES

[Guide to Judiciary Policy Volume 2, Chapter 3](#)

§ 310 Overview

§ 310.10 Scope

- (a) This Code of Conduct applies to all employees of the Judicial Branch except Justices; judges; and employees of the United States Supreme Court, the Administrative Office of the United States Courts, the Federal Judicial Center, the Sentencing Commission, and Federal Public Defender offices.
- (b) Justices and employees of the Supreme Court are subject to standards established by the Justices of that Court. Judges are subject to the [Code of Conduct for United States Judges](#). Employees of the AO and the FJC are subject to their respective agency codes. Employees of the Sentencing Commission are subject to standards established by the Commission. Federal public defender employees are subject to the Code of Conduct for Federal Public Defender Employees. When Actually Employed (WAE) employees are subject to canons 1, 2, and 3 and such other provisions of this code as may be determined by the appointing authority.
- (c) Employees who occupy positions with functions and responsibilities similar to those for a particular position identified in this code should be guided by the standards applicable to that position, even if the position title differs. When in doubt, employees may seek an advisory opinion as to the applicability of specific code provisions.
- (d) Contractors and other nonemployees who serve the Judiciary are not covered by this code, but appointing authorities may impose these or similar ethical standards on such nonemployees, as appropriate.

§ 310.20 History

- (a) With the adoption of the Code of Conduct for Judicial Employees on September 19, 1995, the Judicial Conference repealed the Code of Conduct for Clerks (and Deputy Clerks), the Code of Conduct for United States Probation Officers (and Pretrial Services Officers), the Code of Conduct for Circuit Executives, the Director of the Administrative Office, the Director of the Federal Judicial Center, the Administrative Assistant to the Chief Justice, and All Administrative Office Employees Grade GS-15 and Above, the Code of Conduct for Staff Attorneys of the United States, the Code of Conduct for Federal Public Defenders, and the Code of Conduct for Law Clerks.
- (b) This Code of Conduct for Judicial Employees took effect on January 1, 1996.
- (c) Canon 3F(4) was revised at the March 2001 Judicial Conference.

§ 310.30 Definitions

- (a) Member of a Judge's Personal Staff

As used in this code in canons 3F(2)(b), 3F(5), 4B(2), 4C(1), and 5B, a member of a judge's personal staff means a judge's secretary, a judge's law clerk, and a courtroom deputy clerk or court reporter whose assignment with a particular judge is reasonably perceived as being comparable to a member of the judge's personal staff.

- (b) Third Degree of Relationship

As used in this code, the third degree of relationship is calculated according to the civil law system to include the following relatives: parent, child, grandparent, grandchild, great grandparent, great grandchild, brother, sister, aunt, uncle, niece and nephew.

§ 310.40 Further Guidance

- (a) The Judicial Conference has authorized its Committee on Codes of Conduct to render advisory opinions concerning the application and interpretation of this code. Employees should consult with their supervisor and/or appointing authority for guidance on questions concerning this code and its applicability before a request for an advisory opinion is made to the Committee on Codes of Conduct.
- (b) In assessing the propriety of one's proposed conduct, a judicial employee should take care to consider all relevant canons in this code, the Ethics Reform Act, and other applicable statutes and regulations (e.g., receipt of a gift may implicate canon 2 as well as canon 4C(2) and the Ethics Reform Act gift regulations).
- (c) Should a question remain after this consultation, the affected judicial employee, or the chief judge, supervisor, or appointing authority of such employee, may request an advisory opinion from the Committee. Requests for advisory opinions may be addressed to:

Chair of the Committee on Codes of Conduct
c/o Office of the General Counsel
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Washington, D.C. 20544

§ 320 Text of the Code

Canon 1: A Judicial Employee Should Uphold the Integrity and Independence of the Judiciary and of the Judicial Employee's Office

An independent and honorable Judiciary is indispensable to justice in our society. A judicial employee should personally observe high standards of conduct so that the integrity and independence of the Judiciary are preserved and the judicial employee's office reflects a devotion to serving the public. Judicial employees should require adherence to such standards by personnel subject to their direction and control. The provisions of this code should be construed and applied to further these objectives. The standards of this code shall not affect or preclude other more stringent standards required by law, by court order, or by the appointing authority.

Canon 2: A Judicial Employee Should Avoid Impropriety and the Appearance of Impropriety in All Activities

A judicial employee should not engage in any activities that would put into question the propriety of the judicial employee's conduct in carrying out the duties of the office. A judicial employee should not allow family, social, or other relationships to influence official conduct or judgment. A judicial employee should not lend the prestige of the office to advance or to appear to advance the private interests of others. A judicial employee should not use public office for private gain.

Canon 3: A Judicial Employee Should Adhere to Appropriate Standards in Performing the Duties of the Office

In performing the duties prescribed by law, by resolution of the Judicial Conference of the United States, by court order, or by the judicial employee's appointing authority, the following standards apply:

- (A) A judicial employee should respect and comply with the law and these canons. A judicial employee should report to the appropriate supervising authority any attempt to induce the judicial employee to violate these canons.

Note: A number of criminal statutes of general applicability govern federal employees' performance of official duties. These include:

- [18 U.S.C. § 201](#) (bribery of public officials and witnesses);
- [18 U.S.C. § 211](#) (acceptance or solicitation to obtain appointive public office);
- [18 U.S.C. § 285](#) (taking or using papers relating to government claims);
- [18 U.S.C. § 287](#) (false, fictitious, or fraudulent claims against the government);
- [18 U.S.C. § 508](#) (counterfeiting or forging transportation requests);
- [18 U.S.C. § 641](#) (embezzlement or conversion of government money, property, or records);
- [18 U.S.C. § 643](#) (failing to account for public money);
- [18 U.S.C. § 798](#) and [50 U.S.C. § 783](#) (disclosure of classified information);
- [18 U.S.C. § 1001](#) (fraud or false statements in a government matter);
- [18 U.S.C. § 1719](#) (misuse of franking privilege);
- [18 U.S.C. § 2071](#) (concealing, removing, or mutilating a public record);

- [31 U.S.C. § 1344](#) (misuse of government vehicle);
- [31 U.S.C. § 3729](#) (false claims against the government).

In addition, provisions of specific applicability to court officers include:

- [18 U.S.C. §§ 153, 154](#) (court officers embezzling or purchasing property from bankruptcy estate);
- [18 U.S.C. § 645](#) (embezzlement and theft by court officers);
- [18 U.S.C. § 646](#) (court officers failing to deposit registry moneys);
- [18 U.S.C. § 647](#) (receiving loans from registry moneys from court officer).

This is not a comprehensive listing but sets forth some of the more significant provisions with which judicial employees should be familiar.

- (B) A judicial employee should be faithful to professional standards and maintain competence in the judicial employee's profession.
- (C) A judicial employee should be patient, dignified, respectful, and courteous to all persons with whom the judicial employee deals in an official capacity, including the general public, and should require similar conduct of personnel subject to the judicial employee's direction and control. A judicial employee should diligently discharge the responsibilities of the office in a prompt, efficient, nondiscriminatory, fair, and professional manner. A judicial employee should never influence or attempt to influence the assignment of cases, or perform any discretionary or ministerial function of the court in a manner that improperly favors any litigant or attorney, nor should a judicial employee imply that he or she is in a position to do so.
- (D) A judicial employee should avoid making public comment on the merits of a pending or impending action and should require similar restraint by personnel subject to the judicial employee's direction and control. This proscription does not extend to public statements made in the course of official duties or to the explanation of court procedures. A judicial employee should never disclose any confidential information received in the course of official duties except as required in the performance of such duties, nor should a judicial employee employ such information for personal gain. A former judicial employee should observe the same restrictions on disclosure of confidential information that apply to a current judicial employee, except as modified by the appointing authority.
- (E) A judicial employee should not engage in nepotism prohibited by law.

Note: See also [5 U.S.C. § 3110](#) (employment of relatives); [28 U.S.C. § 458](#) (employment of judges' relatives).

(F) Conflicts of Interest

- (1) A judicial employee should avoid conflicts of interest in the performance of official duties. A conflict of interest arises when a judicial employee knows that he or she (or the spouse, minor child residing in the judicial employee's household, or other close relative of the judicial employee) might be so personally or financially affected by a matter that a reasonable person with knowledge of the relevant facts would question the judicial employee's ability properly to perform official duties in an impartial manner.
- (2) Certain judicial employees, because of their relationship to a judge or the nature of their duties, are subject to the following additional restrictions:
 - (a) A staff attorney or law clerk should not perform any official duties in any matter with respect to which such staff attorney or law clerk knows that:
 - (i) he or she has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
 - (ii) he or she served as lawyer in the matter in controversy, or a lawyer with whom he or she previously practiced law had served (during such association) as a lawyer concerning the matter, or he, she, or such lawyer has been a material witness;
 - (iii) he or she, individually or as a fiduciary, or the spouse or minor child residing in his or her household, has a financial interest in the subject matter in controversy or in a party to the proceeding;
 - (iv) he or she, a spouse, or a person related to either within the third degree of relationship (as defined above in [§ 310.40](#)), or the spouse of such person (A) is a party to the proceeding, or an officer, director, or trustee of a party; (B) is acting as a lawyer in the proceeding; (C) has an interest that could be substantially affected by the outcome of the proceeding; or (D) is likely to be a material witness in the proceeding;

- (v) he or she has served in governmental employment and in such capacity participated as counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.
- (b) A secretary to a judge, or a courtroom deputy or court reporter whose assignment with a particular judge is reasonably perceived as being comparable to a member of the judge's personal staff, should not perform any official duties in any matter with respect to which such secretary, courtroom deputy, or court reporter knows that he or she, a spouse, or a person related to either within the third degree of relationship, or the spouse of such person
 - (i) is a party to the proceeding, or an officer, director, or trustee of a party;
 - (ii) is acting as a lawyer in the proceeding;
 - (iii) has an interest that could be substantially affected by the outcome of the proceeding; or
 - (iv) is likely to be a material witness in the proceeding; provided, however, that when the foregoing restriction presents undue hardship, the judge may authorize the secretary, courtroom deputy, or court reporter to participate in the matter if no reasonable alternative exists and adequate safeguards are in place to ensure that official duties are properly performed. In the event the secretary, courtroom deputy, or court reporter possesses any of the foregoing characteristics and so advises the judge, the judge should also consider whether the [Code of Conduct](#) for United States Judges may require the judge to recuse.
- (c) A probation or pretrial services officer should not perform any official duties in any matter with respect to which the probation or pretrial services officer knows that:
 - (i) he or she has a personal bias or prejudice concerning a party;

- (ii) he or she is related within the third degree of relationship to a party to the proceeding, or to an officer, director, or trustee of a party, or to a lawyer in the proceeding;
 - (iii) he or she, or a relative within the third degree of relationship, has an interest that could be substantially affected by the outcome of the proceeding.
- (3) When a judicial employee knows that a conflict of interest may be presented, the judicial employee should promptly inform his or her appointing authority. The appointing authority, after determining that a conflict or the appearance of a conflict of interest exists, should take appropriate steps to restrict the judicial employee's performance of official duties in such manner so as to avoid a conflict or the appearance of a conflict of interest. A judicial employee should observe any restrictions imposed by his or her appointing authority in this regard.
- (4) A judicial employee who is subject to canon 3F(2)(a) should keep informed about his or her personal and fiduciary financial interests and make a reasonable effort to keep informed about the personal financial interests of a spouse or minor child residing in the judicial employee's household. For purposes of this canon, "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:
 - (a) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the employee participates in the management of the fund;
 - (b) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;
 - (c) the proprietary interest of a policy holder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

- (d) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.
- (5) A member of a judge's personal staff should inform the appointing judge of any circumstance or activity of the staff member that might serve as a basis for disqualification of either the staff member or the judge, in a matter pending before the judge.

Canon 4: In Engaging in Outside Activities, a Judicial Employee Should Avoid the Risk of Conflict with Official Duties, Should Avoid the Appearance of Impropriety, and Should Comply with Disclosure Requirements

(A) Outside Activities

A judicial employee's activities outside of official duties should not detract from the dignity of the court, interfere with the performance of official duties, or adversely reflect on the operation and dignity of the court or office the judicial employee serves. Subject to the foregoing standards and the other provisions of this code, a judicial employee may engage in such activities as civic, charitable, religious, professional, educational, cultural, a vocational, social, fraternal, and recreational activities, and may speak, write, lecture, and teach. If such outside activities concern the law, the legal system, or the administration of justice, the judicial employee should first consult with the appointing authority to determine whether the proposed activities are consistent with the foregoing standards and the other provisions of this code.

(B) Solicitation of Funds

A judicial employee may solicit funds in connection with outside activities, subject to the following limitations:

- (1) A judicial employee should not use or permit the use of the prestige of the office in the solicitation of funds.
- (2) A judicial employee should not solicit subordinates to contribute funds to any such activity but may provide information to them about a general fund-raising campaign. A member of a judge's personal staff should not solicit any court personnel to contribute funds to any such activity under

circumstances where the staff member's close relationship to the judge could reasonably be construed to give undue weight to the solicitation.

- (3) A judicial employee should not solicit or accept funds from lawyers or other persons likely to come before the judicial employee or the court or office the judicial employee serves, except as an incident to a general fund-raising activity.

(C) Financial Activities

- (1) A judicial employee should refrain from outside financial and business dealings that tend to detract from the dignity of the court, interfere with the proper performance of official duties, exploit the position, or associate the judicial employee in a substantial financial manner with lawyers or other persons likely to come before the judicial employee or the court or office the judicial employee serves, provided, however, that court reporters are not prohibited from providing reporting services for compensation to the extent permitted by statute and by the court. A member of a judge's personal staff should consult with the appointing judge concerning any financial and business activities that might reasonably be interpreted as violating this code and should refrain from any activities that fail to conform to the foregoing standards or that the judge concludes may otherwise give rise to an appearance of impropriety.
- (2) A judicial employee should not solicit or accept a gift from anyone seeking official action from or doing business with the court or other entity served by the judicial employee, or from anyone whose interests may be substantially affected by the performance or nonperformance of official duties; except that a judicial employee may accept a gift as permitted by the Ethics Reform Act of 1989 and the Judicial Conference regulations thereunder. A judicial employee should endeavor to prevent a member of a judicial employee's family residing in the household from soliciting or accepting any such gift except to the extent that a judicial employee would be permitted to do so by the Ethics Reform Act of 1989 and the Judicial Conference regulations thereunder.

Note: See [5 U.S.C. § 7353](#) (gifts to federal employees). See also [5 U.S.C. § 7342](#) (foreign gifts); [5 U.S.C. § 7351](#) (gifts to superiors).

- (3) A judicial employee should report the value of gifts to the extent a report is required by the Ethics Reform Act, other applicable law, or the Judicial Conference of the United States.

Note: See [5 U.S.C. App. §§ 101 to 111](#) (Ethics Reform Act financial disclosure provisions).

- (4) During judicial employment, a law clerk or staff attorney may seek and obtain employment to commence after the completion of the judicial employment. However, the law clerk or staff attorney should first consult with the appointing authority and observe any restrictions imposed by the appointing authority. If any law firm, lawyer, or entity with whom a law clerk or staff attorney has been employed or is seeking or has obtained future employment appears in any matter pending before the appointing authority, the law clerk or staff attorney should promptly bring this fact to the attention of the appointing authority.

(D) Practice of Law

A judicial employee should not engage in the practice of law except that a judicial employee may act pro se, may perform routine legal work incident to the management of the personal affairs of the judicial employee or a member of the judicial employee's family, and may provide pro bono legal services in civil matters, so long as such pro se, family, or pro bono legal work does not present an appearance of impropriety, does not take place while on duty or in the judicial employee's workplace, and does not interfere with the judicial employee's primary responsibility to the office in which the judicial employee serves, and further provided that:

- (1) in the case of pro se legal work, such work is done without compensation (other than such compensation as may be allowed by statute or court rule in probate proceedings);
- (2) in the case of family legal work, such work is done without compensation (other than such compensation as may be allowed by statute or court rule in probate proceedings) and does not involve the entry of an appearance in a federal court;
- (3) in the case of pro bono legal services, such work

- (a) is done without compensation;
- (b) does not involve the entry of an appearance in any federal, state, or local court or administrative agency;
- (c) does not involve a matter of public controversy, an issue likely to come before the judicial employee's court, or litigation against federal, state or local government; and
- (d) is reviewed in advance with the appointing authority to determine whether the proposed services are consistent with the foregoing standards and the other provisions of this code.

Judicial employees may also serve as uncompensated mediators or arbitrators for nonprofit organizations, subject to the standards applicable to pro bono practice of law, as set forth above, and the other provisions of this code.

A judicial employee should ascertain any limitations imposed by the appointing judge or the court on which the appointing judge serves concerning the practice of law by a former judicial employee before the judge or the court and should observe such limitations after leaving such employment.

Note: See also [18 U.S.C. § 203](#) (representation in matters involving the United States); [18 U.S.C. § 205](#) (claims against the United States); [28 U.S.C. § 955](#) (restriction on clerks of court practicing law).

(E) Compensation and Reimbursement

A judicial employee may receive compensation and reimbursement of expenses for outside activities provided that receipt of such compensation and reimbursement is not prohibited or restricted by this code, the Ethics Reform Act, and other applicable law, and provided that the source or amount of such payments does not influence or give the appearance of influencing the judicial employee in the performance of official duties or otherwise give the appearance of impropriety. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by a judicial employee and, where appropriate to the occasion, by the judicial employee's spouse or relative. Any payment in excess of such an amount is compensation.

A judicial employee should make and file reports of compensation and reimbursement for outside activities to the extent prescribed by the Ethics Reform Act, other applicable law, or the Judicial Conference of the United States.

Notwithstanding the above, a judicial employee should not receive any salary, or any supplementation of salary, as compensation for official government services from any source other than the United States, provided, however, that court reporters are not prohibited from receiving compensation for reporting services to the extent permitted by statute and by the court.

Note: See [5 U.S.C. App. §§ 101 to 111](#) (Ethics Reform Act financial disclosure provisions); [28 U.S.C. § 753](#) (court reporter compensation). See also [5 U.S.C. App. §§ 501 to 505](#) (outside earned income and employment).

Canon 5: A Judicial Employee Should Refrain from Inappropriate Political Activity

(A) Partisan Political Activity

A judicial employee should refrain from partisan political activity; should not act as a leader or hold any office in a partisan political organization; should not make speeches for or publicly endorse or oppose a partisan political organization or candidate; should not solicit funds for or contribute to a partisan political organization, candidate, or event; should not become a candidate for partisan political office; and should not otherwise actively engage in partisan political activities.

(B) Nonpartisan Political Activity

A member of a judge's personal staff, clerk of court, chief probation officer, chief pretrial services officer, circuit executive, and district court executive should refrain from nonpartisan political activity such as campaigning for or publicly endorsing or opposing a nonpartisan political candidate; soliciting funds for or contributing to a nonpartisan political candidate or event; and becoming a candidate for nonpartisan political office. Other judicial employees may engage in nonpartisan political activity only if such activity does not tend to reflect adversely on the dignity or impartiality of the court or office and does not interfere with the proper performance of official duties. A judicial employee may not engage in such activity while on duty or in the judicial employee's workplace and may not utilize any federal resources in connection with any such activity.

Note: See also [18 U.S.C. chapter 29](#) (elections and political activities).

Last revised July 24, 2009

APPENDIX 2

SOCIAL MEDIA POLICY/GUIDELINES

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
MEMORANDUM

FROM: CHIEF JUDGE HENRY J. BOROFF

TO: ALL COURT EMPLOYEES

DATED: APRIL 22, 2010

SOCIAL MEDIA POLICY/GUIDELINES⁵

The birth and advance of “Web 2.0” technologies and applications in recent years has the potential to revolutionize how individuals, corporations, government agencies, and non-profit organizations interact and communicate with one another. Web 2.0 refers to the second generation of web design and software development, which places heavy emphasis on communication, collaboration, and sharing among internet users. Unlike the first generation of internet (Web 1.0), this change is not grounded in major technical transformations; instead, this change is centered, chiefly, on the ways individuals use the Internet. Before Web 2.0, most Internet users were mainly consumers of information; now, these new technologies and applications allow users to be both producers and consumers of information and shift easily between those roles.

For many individuals, Web 2.0 applications (often called “social media”) are central to their daily computer usage. Users connect and communicate through social networking internet sites; collaborate on, refine, and disseminate knowledge through wikis; share their perspective through blogs and microblogs; upload still and video images through videosharing and photosharing sites; broadcast via podcasts and

⁵ We thank the United States District Court for the District of Rhode Island for the availability of their social guidelines from which these were adopted. Law Clerks and Interns of this Court should, however, especially note that they are also bound by the First Circuit Judicial Council “Interim Policy-- Use of Social Networking Sites by Law Clerks.” They should consult the First Circuit’s policy in addition to this policy.

vodcasts; and stay connected via RSS feeds beamed to e-mail inboxes or displayed on smartphones.

As Web 2.0 has made communication instantaneous and allowed for greater collaboration and information sharing, there has been some downside. Many users adopting Web 2.0 seem less concerned, or at least mindful, of privacy and confidentiality as they navigate social media sites such as Facebook. Recent news stories illustrate the privacy and confidentiality concerns generated by the expansion of social media internet usage: employment opportunities lost because of Facebook profiles; scandal precipitated by YouTube or Flickr postings, and judicial proceedings compromised by jurors' Twitter postings.

The challenges and risks of such social media, though, are particularly acute for government employees who work in positions where discretion and confidentiality are imperative. Court employees work in such an environment. Court personnel are expected to keep sensitive information confidential, exercise discretion to avoid embarrassment to the Court, and take precautions to avoid unnecessary security risks for court personnel, especially the judges they serve.

The Court has set down the following series of broad guidelines for employees to follow as they navigate these new, and ever-changing, technologies and applications.

1. **Think before you post.** Internet postings—whether they be text, photos, videos, or audio—remain accessible long after they are forgotten by the user. Beyond that, remember that nothing is “private” on the Internet despite people’s best efforts to keep things private. Do not post anything on the Internet that you would not want to read on the front page of the Boston Globe, the Boston Herald, the Worcester Telegram or the Springfield Republican.

2. **Speak for yourself, not your institution.** On social networking sites, many individuals list their occupations and/or places of employment. Considering the sensitive nature of the work that we do, Court employees are discouraged from listing their place of employment on a social networking website. Such a listing may pose a security risk. Also, remember that you are a representative of the Court and should conduct yourself in a way that avoids bringing embarrassment upon yourself and/or the Court. In the age of Facebook, YouTube and Twitter, many often do not think through the implications of what they post. Users often believe that their postings are private because of a social networking website’s privacy features or that their comments are untraceable because they were made under a screen name, but this information may not be private and could

cause damage to your reputation and the Court's if it becomes public. As such, Court employees should abide by a simple rule: if you are not speaking to someone directly or over a secure landline, you must assume that anything you say or write is available for public consumption.

3. **Keep secrets secret.** Court employees handle confidential and sensitive information and the restrictions that employees normally observe in the performance of their day-to-day duties should also apply to their use of social media. Just as court employees are prohibited from disclosing sensitive, non-public information to the media and general public in person or over the phone, the same applies to social media. Furthermore, Court employees should refrain from discussing any of the Court's internal processes and procedures, whether they are of a non-confidential or confidential nature.

4. **Remember the Guide.** Any public postings are governed by the Judiciary's Guide to Policies and Procedures. As Judiciary employees, we are expected to avoid impropriety and conduct ourselves in a manner that does not detract from the dignity and independence of the judicial system. As such, Judiciary employees are restricted from engaging in partisan political activity and fundraising activities that could compromise judicial independence. Please keep these policies and procedures in mind as you participate on social media sites. If you have any questions about these policies, our Clerk or his Chief Deputy will distribute copies to you or give advice in this area.

5. **Observe security protocols.** Court employees must also take care to avoid doing things that would compromise the security of the courthouse and personnel. To maintain security, do not post pictures of the courthouse, inside or outside; do not post pictures of court events; and do not post pictures of the Court's judicial officers. Also, be careful when disclosing your place of employment: social media sites are notoriously unsecure environments and knowledge of your place of employment could place you in a position where pressure could be applied on you in an attempt to corrupt the integrity of the judicial process.

(End of Memorandum)

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APPENDIX 3

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

MEMORANDUM (USE OF SOCIAL NETWORKING SITES BY LAW CLERKS)

TO: Judicial Law Clerks Within the First Circuit

FROM: Gary Wente, Circuit Executive

DATE: February 9, 2010

RE: First Circuit Judicial Council Interim Policy --- Use of Social Networking Sites by Law Clerks

At the September 2009 meeting of the Judicial Conference of the United States, the Chair of the Committee on Codes of Conduct called to the attention of all chief judges a problem that has arisen relating to the use of social networking sites and blogs, primarily by judges' law clerks. On multiple occasions, federal judicial law clerks have posted inappropriate comments about court operations, including comments about pending cases. As far as we know, the practice is not widespread; however, the fact that these comments can be seen by such a vast number of people makes the issue an extremely serious one. We expect the Judicial Conference of the United States, working with the Administrative Office of the United States Courts, to develop a national policy regarding this issue at some point soon. In the meantime, the Judicial Council of the First Circuit feels interim action is needed and has adopted this interim policy.

Law clerks must bear in mind that there are a considerable number of restrictions on judges, court executives, employees and law clerks on matters of ethics, appearances and decorum. These restrictions apply with full force to material posted on the web and to communications made with others, using court or personal facilities. It is the responsibility of each law clerk to be aware of these restrictions and to comply with them. See, e.g., Canon 3D of the Code of Conduct for Judicial Employees; Canon 4A of the Code of Conduct for Judicial Employees; Canon 5 of the Code of Conduct for Judicial Employees. See generally, Redesigned Guide to Judicial Policies and Procedures, Volume 2, Part A, Chapter 3, Codes of Conduct for Judicial Employees, and Volume 2, Part C, Ethics Statutes, Regulations, and Judicial Conference Resolutions. The ethical rules

provide, among other things, that judicial employees must "avoid making public comments on the merits of a pending or impending action;" must exhibit behavior at all times that does not "detract from the dignity of the court, interfere with the performance of official duties, or adversely reflect on the operation and dignity of the court or office the judicial employee serves;" and must refrain from partisan and non-partisan political activity.

Of course, like other restrictions that are imposed by statute, AO regulations, and court rules, there can be direct consequences of violations of these provisions, up to and including dismissal. Matters that may strike a law clerk as comparatively innocent can result in substantial adverse publicity and can cause damage both to the judiciary and to the clerk's career. Obtaining future employment in the public or private sector can be affected by postings that may now seem trivial. The speed and breadth of the internet means clerks don't have a second chance once the material is posted or sent. We have great confidence in our law clerks in whose help and good judgment we trust, but it is useful to remind all employees of the seriousness of ethical breaches. The only way to avoid them is to keep abreast of the obligations and refrain from posting or sending anything which may raise a doubt. To avoid some of the problems that have arisen, law clerks would be well advised to make no web postings or other communications during their clerkships (or after) that discuss cases involving their court or any other court (whether impending, pending or recently decided), discuss the internal operations of any court, or discuss matters relating to their own or other chambers of any court. Law clerks should identify their employer only when necessary in seeking future employment.

If you have any questions regarding this policy, please contact Gary Wente, Circuit Executive, 617-748-9613, Susan Goldberg, Deputy Circuit Executive, 617-748-9614 or the judge for whom you are clerking.

APPENDIX 4

DRESS CODE POLICY

Adopted November 2, 2010

11 DRESS CODE POLICY

A professional, businesslike appearance is a positive reflection on you, the Court, and the Clerk's Office. As a Federal Court with extensive contact with the public, we are all called to dress and behave in a professional, dignified and respectful manner. People will judge the entire office by each employee's appearance and courtesy. With that in mind, the court has adopted a Dress Code Policy, the purpose of which is to provide guidance to Clerk's Office personnel as to what attire is deemed appropriate, and inappropriate, for wear while present in the office. The following guidelines are not all inclusive. If you are in doubt about an item meeting these guidelines, do not wear it or ask your supervisor prior to wearing it.

11.1 GENERAL STANDARD

All Clerk's Office employees, full-time, part-time, temporary or interns are expected to dress appropriately and have a professional, businesslike appearance at all times. The Court's Dress Code Policy applies to all employees of the Clerk's Office. The Clerk of Court may vary or waive any or all or parts of this policy for individuals or departments at his/her discretion.

11.2 EMPLOYEES WITH COURTROOM DUTIES

For employees with courtroom duties, apparel should be suitable to the dignity of the court. Female personnel are expected to wear a business professional dress, skirt and blouse, suit, pantsuit or other business attire with appropriate hosiery and footwear. Male personnel are expected to wear a dress shirt, jacket, and tie that are appropriately matched, pressed and clean, with appropriate socks and footwear. Above all, employees should use discretion and common sense.

11.3 CLERK'S OFFICE

The week is divided into two categories:

- Monday through Thursday Professional Business wear; and
- Friday Business Casual.

All Clerk's Office employees, full-time, part-time, temporary or interns are eligible to participate in Friday Business Casual Day. Appropriate and inappropriate attire are listed later in this policy.

1. If an article of clothing is appropriate for Monday through Thursday, it is also appropriate for Friday.
2. Any clothing that is sheer or revealing, exposing someone's back, chest, cleavage, stomach or undergarments, is prohibited at all times.
3. The Dress Code will be administered by managers, supervisors and team leaders for those employees for whom they have supervisory⁶ or acting supervisory responsibility.
4. One warning, either verbal or written, as a result of an infraction of this policy will be given to the employee by a manager or supervisor. For a second infraction of the policy, the employee will be sent home to return wearing appropriate attire. Annual leave will be charged for any and all time the employee is out of the office.
5. A supervisor or manager may allow an exception to the Dress Code, with prior permission of the Clerk of Court, which is either temporary or permanent, in the event of:
 - a. a special project which may result in soiling or undue wear and tear on clothing (e.g., boxing of old files, moving one's work station);
 - b. a medical condition (e.g., injury such as a broken foot or leg). A certificate from a medical doctor may be requested by a supervisor.
 - c. other special circumstances
6. Repeated infractions may be cause for disciplinary action.
7. The Dress Code may be reviewed and amended periodically by the Clerk.

⁶This phrase also refers to those times when someone is authorized to act in the capacity of the supervisor who may be absent or on vacation.

UNITED STATES BANKRUPTCY COURT – DISTRICT OF MASSACHUSETTS

DRESS CODE

Appropriate for Monday through Thursday	Sweaters Topsiders (leather boat shoes) Turtlenecks Vests Dress Sandals Appropriate for Friday	
Men's Attire:	Appropriate for Friday	Never Appropriate Any day of the week for Men or Women
Dress shirts	Men's Attire:	Wrinkled, faded or torn clothes
Dress pants	Sport shirts w/collar	Revealing, sheer or tight-fitting clothes
Dress socks	Flannel fabric shirts	Beachwear of any kind
Khaki pants (Dockers Type)	Jeans (white, black, or very dark blue - no stonewash))	Faded, torn, bleached stonewashed or light-color jeans
Dress shoes, boots, Loafers	Jean shirts	Cargo pants or painter's pants
Polo shirts	Knit shirts (polo or golf shirts)	Construction boots
Sport coats/Blazer	Turtlenecks	Athletic shoes, sneakers (any variety) ⁷
Suits	White or athletic socks	Flip-flops or flip-flop style
Sweaters (over dress shirts)		Shorts of any kind
Ties	Women's Attire:	Athletic/Exercise clothing of any kind
Topsiders	Flannel fabric shirts	Sweats (jackets, pants, shirts)
Vests	Capri pants or slacks (no cargo pockets or painters pants)	Hoodies or sweatshirt material
Women's Attire:	Jeans (white, black, or very dark blue - no stonewash)	Clothing with slogans or pictures
Blouse	Denim dresses and skirts (any color but light or stonewashed blue)	Tee shirts
Boots	Knit shirts (polo or golf shirts)	Skorts or Skorts sets
Dresses (no denim)	White or athletic socks	Leggings
Dress flat shoes	Sandals	Stirrup pants
Dress pants		Halter Tops /Tanks tops
Dress socks		Hats
High-heeled shoes		
Khaki pants (Docker Type)		
Dress shoes		
Leather walking shoes (rubber soled)		
Loafers		
Polo shirts		
Scarves		
Skirts		
Blazer/Suit Coat/Jacket		
Suits		

⁷ Unless medically necessary.

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APPENDIX 5

TELEWORK POLICY

12 TELEWORK POLICY

12.1 APPLICABILITY

The Telework Policy applies to all employees of the Court who are eligible to telework.

12.2 DEFINITIONS

- Ad hoc telework – Telework that occurs on an occasional, non-routine basis.
- Regular and recurring telework – Telework that occurs on a routine, regular, and recurring basis away from an employee's principal place of duty (e.g., at home, at a telework center, or other work site geographically convenient to the residence of the employee) at least one day per pay period.
- Telework – A working arrangement that allows eligible employees to perform their official duties and responsibilities at home or at some location other than the regular work site for their position, such as at a telework center; this is commonly known as telecommuting.
- Duty Station – Each employee has been assigned a permanent location where they report and perform their work called their duty station. When an employee teleworks and is not required to report to the employing court location at least twice each biweekly pay period on a regular and recurring basis (other than during temporary telework, e.g., during a medical recovery period, weather emergency, or pandemic health crisis), the employee's official duty station must be changed to the telework site (JCUS-SEP 10) and a completed Telework Duty Station Change form must be submitted to the Personnel Department. See Telework Form 5.

12.3 REQUIREMENTS

- Telework is permitted only at management's discretion and is not an employee entitlement.
- Employee participation in telework is voluntary.
- Before beginning regular and recurring or ad hoc telework, an employee must acknowledge, sign and complete the following forms:

- Appendix 2 or 3 Regarding Social Networking Sites
- [Employee/Supervisor Telework Agreement](#)
- [Employee/Supervisor Orientation Checklist](#)
- [Self-Certification Safety Checklist](#)
- [Information Technology Security Checklist](#)
- The use of telework does not change the terms and conditions of employment.
- Telework will give some employees more flexibility to meet family responsibilities; however, it is not a substitute for dependent care (e.g., child or elder). Employees must not use duty time for purposes other than official duties.
- Telework is subject to continuous management approval and monitoring.

12.4 ELIGIBILITY

To be eligible for telework, an employee must occupy a suitable position and have the appropriate mindset to work at home and remain productive, specifically, employees who:

- can work independently,
- have good communication skills,
- are organized and focused on priorities,
- are conscientious,
- meet deadlines,
- perform at the very good level or above, and
- effectively coordinate objectives and activities with the supervisor.
- Employees not suited for telework include those with poor disciplinary, attendance, and/or performance records.

12.5 TASKS SUITABLE FOR TELEWORK

The types of positions and functions suitable for telework are determined by management in cooperation with the employee's supervisor and are based on job content rather than job title or work schedule. Functions that are best suited for telework generally involve tasks with specific outcomes that can be easily evaluated or assessed, and that can be independently performed.

12.6 CANCELLATION

Cancellation of the telework arrangement is at the discretion of either the supervisor or the employee. Telework will be discontinued if a supervisor determines that it:

- adversely affects the performance or development of an employee who teleworks or of his/her co-workers, or
- interferes with the efficient operation of the court.

Note: Appropriate advance notice should be provided (e.g., one week) for cancellation of telework.

12.7 WORK ENVIRONMENT

Employees who telework must have alternate work site environments that:

- are safe and adequate places to work,
- are free from interruptions, and
- provide the necessary level of security and protection for government property and data confidentiality.

12.8 GOVERNMENT-OWNED EQUIPMENT

The following government-owned equipment may be placed at approved alternate work sites (including an employee's residence) to be used for telework:

- computers (personal computers, laptops and cyclically replaced personal computers),
- telecommunications equipment, and
- other types of equipment (e.g., copier, printer or facsimile equipment).

Certain conditions and responsibilities result from having Government-Owned Equipment

- The government retains ownership and control of hardware, software, and data.
- Government-owned equipment placed at alternate work sites is for official use only.
- The maintenance and repair of government-owned equipment placed at alternate work sites are the responsibility of the court.

12.9 MAINTENANCE OR REPAIR OF EQUIPMENT

Government-owned equipment should be brought to the office for maintenance or repair. It is recommended that information technology staff not go to off-site locations to provide set-up, services, or repairs. Information technology assistance should be provided through the use of a “help desk” by telephone and/or by on-line access (“Use of Judiciary-owned Portable and Personal Computers in Private Residences,” IRM Bulletin 2001-02, Section 5.b(1))

12.10 LIABILITY FOR LOSS OR DAMAGE

Liability for loss or damage: Ordinarily, an employee will not be held liable for loss or damage to government-owned equipment unless, in the opinion of the Clerk, the loss or damage was due to extreme carelessness or gross misconduct by the employee. An example of such carelessness would be leaving equipment in plain view in an automobile. (See [IRM Bulletin 2001-02, Section 5.d\(5\)](#)).

12.11 PERSONAL EQUIPMENT

Employees may elect to use their own equipment for telework purposes. In that event, employees are responsible for the repair and maintenance of personal equipment.

Employees who use their own personal computers for telework must maintain the necessary level of security. The personal computers must also have locally approved configurations. The configurations should be updated and tested periodically in accordance with local information technology security requirements.

Note: Security risks increase when multiple users have access to the employees’ personal computers that are also used for telework. (See the Information Technology Security Checklist in [Telework Form 4](#)).

12.12 WORKERS’ COMPENSATION

Judiciary employees may be entitled to Workers’ Compensation benefits under the Federal Employees Compensation Act 5 U.S.C. § 8101 et seq., for personal injuries that occur while performing official business at an alternate work site, including when the alternate work site is the employee’s residence.

12.13 EXPENSES

The government is not responsible for operating costs, home maintenance, or any other costs (e.g., utilities) associated with the use of the employee’s residence for telework.

However, management may determine on a case-by-case basis that specific telephone service or functionality is essential to the interest of the judiciary. In these cases, the court may provide telephone service or functionality to the residence of a court employee in support of job-related business, and establish adequate safeguards against use for personal purposes at the government's expense.

Employees participating in telework may be provided with telephone cards and/or reimbursed for business-related long distance telephone calls.

- Off-site network access
- Guidance is provided in the IRM Bulletin 2003-02 for:
- connections to the judiciary's data communications network and local file servers, and
- use of virtual private networking (VPN) or remote access server technology (JPort).

12.14 GOVERNMENT LIABILITIES

Property damage or personal injury – During the course of employees performing official duties and/or using government equipment in employees' residences, the government is not liable for:

- damage to employees' personal or real property (including houses and land),
- damage to another individual's property, or
- personal injury to another individual.

12.15 LIABILITY EXCEPTIONS

Exceptions include the extent to which the government is held liable under the Federal Tort Claims Act (28 U.S.C. § 2671 et seq.) or the Military Personnel and Civilian Employees Claims Act (31 U.S.C. § 3721).

12.16 GOVERNMENT SELF-INSURANCE

For common law torts (e.g., personal injury or property damage) that arise from the alleged negligence of judiciary officers or employees acting in the scope of their official duties, the government's self-insurance may be accessed through the Federal Tort Claims Act.

12.17 DOCUMENTATION

The Telework Agreement and subsequent Forms found in [Appendix 5](#) describe the required documentation employees must complete before beginning any regular and/or recurring or ad hoc telework.

TELEWORK POLICY AND FORMS

Employee/Supervisor Telework Agreement

The following constitutes an agreement on the terms and conditions of telework between this Court and the employee named below:

Name of Employee _____

Name of Supervisor _____

Telework is to be done only with management's approval, and it is not an employee entitlement. The use of telework does not change the terms and conditions of employment.

Employee volunteers to telework and to adhere to the applicable policy requirements. The U.S. Bankruptcy Court concurs with the employee's participation and agrees to adhere to the applicable policy requirements.

The Employee's Official Duty Station is: _____ and the employee's alternated duty station is _____. No other duty stations are authorized.

Describe in detail the designated work area at the alternate work site. _____

The Employee's official tour of duty and locations are as follows:

Pay Period					
	Monday	Tuesday	Wednesday	Thursday	Friday
Week 1					
Location					
Start Time					
End Time					
Week 2					
Location					
Start Time					
End Time					

NOTE: Staff, who work from home, even if it is only for one day per pay period, must designate the day they will be at home in the chart above. Prior notice to the Supervisor/Manager is required when changes are occasionally necessary.

- All pay, leave and travel entitlements are based on an employee's official duty station. A teleworker's official duty station is the telework site unless they are required to report to the employing court at least twice each biweekly pay period (or once per week) on a regular and recurring basis (other than during temporary telework, e.g., during a medical recovery period, weather emergency, or pandemic health crisis) in which case, the official duty station is the employing court location. Travel to official duty stations is not reimbursed in this instance. (See [Personnel Form 34, Telework Duty Station Change](#).)

Employee's time and attendance will be recorded as performing official duties at the official duty station and recorded using the ELMO system.

Employee must obtain supervisory approval before taking leave in accordance with established office procedures. By signing this form, employee agrees to follow established procedures for requesting and obtaining approval of leave.

If employee works overtime that has been requested and approved in advance, employee will receive compensatory time in accordance with applicable Court policy. Employee understands that compensatory time will not be granted for unapproved overtime work. By signing this form, employee agrees that failing to obtain proper advance approval for overtime work will result in denial of compensatory time.

If employee is using government equipment at the alternate work site, employee will protect the government equipment in accordance with the procedures established in Administrative Office Information Resources Management Bulletin 2001-02, Use of Judiciary-owned Portable and Personal Computers in Private Residences, Office of Information and Technology, dated November 30, 2001. Government-owned equipment will be serviced and maintained by the government. The information technology staff will not go to offsite locations to provide set-up, services, or repairs. Information technology assistance will be provided by telephone or on-line. _____

(Initial)

Government equipment should be brought to the office for updates, maintenance and/or repairs once each quarter. If employee provides own equipment, employee is responsible for servicing and maintaining it.

Employee agrees to permit inspections during official work hours to ensure proper maintenance of the government-owned property and work site conformance with safety standards and other specifications in this agreement and policy requirements.

Any job-related accident or injury occurring to employee at the alternate work site must be brought to the immediate attention of the supervisor and the Personnel Administrator. Because a job-related accident sustained by an employee who teleworks will occur outside the premises of the official duty station, the supervisor must investigate all reports immediately following notification. Employee may be covered under the Federal Employees Compensation Act if injured in the course of performing official duties at the alternate work site.

The government will not be liable for damages to employee's personal or real property during the course of performance of official duties, or while using government equipment in employee's residence or for property damage or personal injury to another individual, except to the extent the government is held liable under the Federal Tort Claims Act or the Military Personnel and Civilian Employees Claims Act.

The government will not be responsible for operating costs, home maintenance, or any other costs (e.g., utilities) whatsoever which are associated with the use of the employee's residence.

Employee will meet with the supervisor to receive assignments and to have completed work reviewed as the supervisor considers appropriate.

Employee will complete all assigned work according to work procedures mutually agreed upon by employee and supervisor.

Employee's job performance will be evaluated on criteria and milestones determined by the supervisor for work completed at the official duty station as well as work completed at employee's alternate work site.

Employee's most recent performance rating of record must be at least at an acceptable level (i.e., fully successful, "level 3") and must be sustained at that level or above to maintain telework eligibility.

Employee will protect government records and data from unauthorized disclosure or damage. The government maintains ownership of its records and data and any hardware or software the government provides for use by employee.

Telework Form 1

Employee agrees to limit performance of official assigned duties to official duty station or to court approved alternate work sites. Failure to comply with this provision may result in loss of pay, termination of telework arrangement, and/or other appropriate disciplinary action.

Either management or employee may terminate participation in telework at any time.

Employee Signature_____ Date_____

Supervisor Signature_____ Date_____

Approving Official Signature_____ Date_____

EMPLOYEE/SUPERVISOR TELEWORK ORIENTATION CHECKLIST

The following checklist is designed to ensure that employees who will telework are properly oriented to the requirements of the court.

Name of Employee: _____

Name of Supervisor: _____

Date Completed		
1.	Employee has read the requirements of the telework policy.	
2.	Employee has been provided with an agreed-upon schedule of hours.	
3.	Employee has been provided with Government –owned equipment.	
4.	Employee has not been provided with Government – owned equipment.	
5.	Equipment provided by the Court is documented and a completed Property Pass is on file.	

6. Check as applicable:

computer	<input type="checkbox"/> Yes	<input type="checkbox"/> No
modem	<input type="checkbox"/> Yes	<input type="checkbox"/> No
printer	<input type="checkbox"/> Yes	<input type="checkbox"/> No
fax machine	<input type="checkbox"/> Yes	<input type="checkbox"/> No
copy machine	<input type="checkbox"/> Yes	<input type="checkbox"/> No
desk	<input type="checkbox"/> Yes	<input type="checkbox"/> No
chair	<input type="checkbox"/> Yes	<input type="checkbox"/> No
telephone	<input type="checkbox"/> Yes	<input type="checkbox"/> No
other:	<input type="checkbox"/> Yes	<input type="checkbox"/> No

		Date Completed
7.	Policies and procedures for care and maintenance of government equipment have been explained and are clearly understood.	
8.	Policies and procedures covering the requirements for the security of government equipment and confidential data and the protection of government records and data from unauthorized disclosure or damage have been discussed, are clearly understood, and the employee certifies that the requirements are met and will continue to be met.	
9.	Requirements for an adequate and safe office space and/or area have been discussed, and the employee certifies those requirements are met.	
10.	Performance expectations have been discussed and are clearly understood.	
11.	Employee understands that the Court may terminate employee participation at any time.	

Employee Signature: _____ Date _____

Supervisor Signature: _____ Date _____

Clerk's Signature: _____ Date _____

TELEWORK SELF-CERTIFICATION SAFETY CHECKLIST

Name of Employee: _____

Official Duty Station: _____

The following checklist is designed to assess the overall safety of the alternate work site where the employee will be telecommuting. Please read and complete the self-certification safety checklist. Upon completion, the employee and the supervisor should sign and date the checklist in the spaces provided.

The alternate work site is located at: _____

Describe the designated work area in the alternate work site: _____

The alternate work site telephone number is: _____.

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|
| 1. Are temperature, ventilation, and lighting levels adequate? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Is the space free of noise hazards? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Are all stairs with four or more steps equipped with handrails? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 4. Are all circuit breakers and/or fuses in the electrical panel labeled for intended service? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 5. Do circuit breakers clearly indicate if they are in the open or closed position? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 6. Is all electrical equipment free of recognized hazards (e.g., frayed wires, bare conductors, loose wires, flexible wires in walls, exposed wires to the ceiling)? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7. Will the building's electrical system permit the grounding of electrical equipment? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 8. Are aisles, doorways, and corners free of obstructions to permit visibility and movement? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 9. Are file cabinets and storage closets arranged so drawers and doors do not open into walkways? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

- | | |
|-------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|
| 10. Are the telephone lines, electrical cords, and extension wires secured under a desk or alongside a baseboard? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 11. Is the office space neat, clean, and free of excessive amounts of combustibles? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 12. Are carpets well-secured to the floor and free of worn or frayed seams? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 13. Is placement of the monitor and keyboard satisfactory? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 14. Is there enough leg room at the desk? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 15. Is the chair adjustable and does it provide adequate support? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

Employee signature: _____ Date _____

Supervisor signature: _____ Date _____

Clerk's Signature: _____ Date _____

Approved [] Disapproved []

Note: Supervisors should discuss all "No" answers with each employee and request that the employee correct the deficient areas. The employee should inform the supervisor of the action(s) taken to remedy the deficiencies before the employee and the supervisor sign-off on the checklist.

INFORMATION TECHNOLOGY SECURITY CHECKLIST

A copy of this checklist should be provided to each employee applying to telework and to the IT staff for them to complete the appropriate section(s), and to sign and date in the spaces provided prior to any telework occurring.

Name of Employee: _____

Name of IT Staff Member: _____

1. Employee has been authorized to access the data communication network (DCN) remotely.

_____ *Supervisor Initials*

2. Employee has a unique user identification (ID) and password for remote access.

_____ *IT Initials*

3. Employee agrees to protect their user ID(s) and password(s) from unauthorized use.

_____ *Employee Initials*

4. Employee agrees to keep judiciary information and assets (hardware, software, data, records) in a physically secure location and protected from theft, fire, water, and hazardous material.

_____ *Employee Initials*

5. The Employee certifies that a password-protected screen saver has been installed on the machine at the alternate work site that it will automatically activate after no more than 15 minutes of inactivity and is evocable on demand to control access when the terminal is unattended.

_____ *Employee Initials*

6. Employee certifies that he/she has a means of securing sensitive information and media (e.g., locked drawer or cabinet) at the alternate work site and will use it to protect such information.

_____ *Employee Initials*

7. Employee certifies that he/she has and will use a procedure for destroying sensitive trash (e.g., shredder, tearing up printouts immediately if not using).

_____ *Employee Initials*

8. The employee agrees that they are responsible for functioning computer equipment, including, but not limited to a virus and malware free PC, and working internet connection.

_____ *Employee Initials*

Note: IT staff should review Telework Form 4 with the applicant and answer any questions they may have as to their responsibilities.

Employee signature: _____ Date _____

IT Review signature: _____ Date _____

Clerk's Signature: _____ Date _____

Approved [] Disapproved []

APPENDIX 6
GRIEVANCE FORM

Name _____ Department _____

Statement of Grievance _____

[CONTINUE ON REVERSE IF NECESSARY]

Settlement Desired

I discussed this with my supervisor/manager on _____
(Date)

(Employee Signature)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

GRIEVANCE RECORD

Step 1. Manager/Chief Deputy Clerk

Date Received _____ Date Discussed _____

Summary of Facts

Decision

Date Returned to Employee _____

Signature _____ Title _____

Step 2. Clerk of Court

Date Received _____ Date Discussed _____

Summary of Facts _____

Decision

Date Returned to Employee _____

Signature _____ Title _____

[**NOTE:** The Clerk's decision is final, and may not be appealed.]

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS**

EMPLOYMENT DISPUTE RESOLUTION PLAN

OCTOBER 1999
AMENDED JUNE 2010
AMENDED MAY 2013
EFFECTIVE May 1, 2013

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EMPLOYMENT DISPUTE RESOLUTION PLAN

CHAPTER 1 – GENERAL PROVISIONS

A. PREAMBLE

This Employment Dispute Resolution (“EDR”) Plan was approved by the Judicial Council of the First Circuit in order to provide court employees with a means of resolving certain issues which arise in the course of their employment. This Plan is intended to provide court employees the substantive rights and protections of the Model EDR Plan adopted by the Judicial Conference of the United States in March 2010 and amended September 2012. The Judicial Conference adopted its Model EDR Plan in response to the Congressional Accountability Act of 1995, in which legislative branch employees were provided with certain rights. The rights conferred by the Judicial Conference to employees of the judiciary are comparable to those available to legislative branch employees or to any of the rights available under various federal statutes which relate to employment matters addressed by this Plan.⁸ However, certain workplace and employment issues cannot be resolved by the courts under this Plan, since the court does not have the authority to do so.

This Plan addresses the following workplace and employment issues:

- Equal Employment Opportunity and Anti-Discrimination Rights
- Sexual Harassment
- Family and Medical Leave Rights
- Employment and Reemployment Rights of Members of the Uniformed Services
- Occupational Safety and Health Protections
- Polygraph Tests
- Whistleblower Protection
- Employee Dispute Resolution Procedures for Claims of the Denial of the Rights Afforded Under this Plan

Chapter 1 of this Plan sets forth general provisions, provides definitions of terms used throughout the Plan and provides information relating to coverage. Chapters 2 –

⁸ Title VII of the Civil Rights Act of 1964; Americans with Disabilities Act of 1990; Age Discrimination in Employment Act of 1967; Family and Medical Leave Act of 1993; Occupational Health and Safety Act of 1970; Employee Polygraph Protection Act of 1988; Rehabilitation Act of 1973; Chapter 43 of Title 38 (relating to veterans’ employment and reemployment).

7 summarize the rights that are protected under the Plan. Chapter 7 sets forth the dispute resolution procedures that should be invoked by any individual who feels his or her rights were violated.

Some courts have provided additional rights and protections to employees through general grievance or adverse action procedures. This Plan does not affect the operation of such plans. However, an employee may bring a particular complaint only once. Therefore, if the employee's court has a grievance or adverse action procedure in addition to this Plan, the employee should carefully evaluate under which procedure he or she wishes to proceed. If the employee is unsure, he or she is encouraged to discuss the issue with his or her EDR coordinator. Anyone not covered by this Plan who has a concern regarding a workplace and/or employment issue may contact the Office of the Circuit Executive for guidance.

Complaints alleging that a judicial officer engaged in conduct prejudicial to the efficient and expeditious administration of the business of the courts or is unable to discharge all of the duties of office by reason of mental or physical disability are to be brought exclusively pursuant to 28 U.S.C. Sec. 351 et seq. To bring such a complaint, a copy of the Rules for Judicial-Conduct and Judicial-Disability Proceedings may be obtained from the Circuit Executive's Office.

B. DEFINITIONS

For purposes of this Plan:

1. The term "CLAIM" means the filing of a request for counseling and or mediation as set forth in Chapter 8, which may be further pursued by the filing of a request for hearing.
2. EMPLOYEE OR STAFF. The term "employee" and the term "staff" includes all applicants for employment, current employees and former employees, except the following individuals, who are specifically excluded and are not covered under this Plan:
 - (a) Temporary employees and applicants for temporary positions;
 - (b) Applicants for law clerk and intern and extern positions;
 - (c) Interns and externs;

- (d) Applicants for the position of secretary to a judicial officer;
- (e) Applicants for Bankruptcy Judge positions;
- (f) Volunteer counselors or mediators; and
- (g) Other individuals who are not employees of an “employing office” as defined in § 3 below.

3. UNIT EXECUTIVE.

The Term “unit executive” includes:

- (a) The clerk of the bankruptcy court.

4. EMPLOYING OFFICE.

The term “employing office” includes all offices of:

The United States Bankruptcy Court for the District of Massachusetts including:

- (a) bankruptcy judges’ chambers;
- (b) office of the clerk of the bankruptcy court;

The court in which the judicial officer sits is the employing office of the judicial officer and his or her chambers staff.

- 4. JUDICIAL OFFICER OR JUDGE. The terms “judicial officer” and “judge” mean a judge appointed under Article III of the Constitution, a United States Bankruptcy Judge, or a United States Magistrate Judge.
- 5. COURT. The term “court” applies to the offices of the United States Bankruptcy Court for the District of Massachusetts.
- 6. DAY. For purposes of determining periods of time in the procedural sections of this Plan, the word “day” pertains to a calendar day, not a business day. If the deadline falls on a Saturday, Sunday or holiday, the deadline shall be extended to the following Monday or court business day respectively.

C. SCOPE OF COVERAGE

1. WHO IS COVERED.

This Plan applies to:

- (a) All bankruptcy judges of the United States Bankruptcy Court for the District of Massachusetts;
- (b) Judges' chambers staff, excluding interns or externs;
- (c) The unit executive and staff of the following support offices;
 - (1) Office of the clerk of the bankruptcy court

CHAPTER 2 — EQUAL EMPLOYMENT OPPORTUNITY AND ANTI-DISCRIMINATION RIGHTS

A. GENERAL

Discrimination against employees based on race, color, religion, sex (including pregnancy and sexual harassment), national origin, age (at least 40 years of age at the time of the alleged discrimination), and disability is prohibited, subject to the specific exemptions set forth in parts B and C of this chapter. Harassment against an employee based upon any of these protected categories or retaliation for engaging in any protected activity is prohibited. The rights and protections of Sections I through VII of the First Circuit Court of Appeal's Equal Employment Opportunity Plan shall also apply to employees.

B. DISABILITY

- 1. The term "disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an employee, a record of such impairment, or being regarded as having such impairment. See 42 U.S.C. § 12102(2).
- 2. The provisions of section A of this Chapter do not preclude consideration of a person's physical or mental impairments if they would significantly affect that individual's ability to perform important aspects of the job in question. Before a person is rejected from or removed from a job because of physical or mental impairments, reasonable accommodations shall be considered in making the decision.

3. Because probation officers are placed in high risk situations where a physical or mental disability could place them and others in extreme jeopardy, probation officers are excluded from this section.

C. AGE

1. The provisions of Section A of this Chapter relating to age do not preclude (subject to the protections afforded in Section B of this Chapter) consideration of a particular individual's physical or mental impairment or limitation that significantly affects that person's ability to perform important aspects of a job even though that impairment or limitation may be the result of the aging process.
2. The provisions of Section A of this Chapter relating to age are subject to special provisions of law and regulations approved by the Judicial Conference with respect to the maximum age at initial hiring of probation and pretrial services and to mandatory retirement ages for such persons.

D. RELIGION

Reasonable accommodation shall be made for an individual's religious observances and practices unless it would impair the operations or dignity of the court or impose undue hardship on other court personnel.

E. SEXUAL HARASSMENT

Employees of the court shall not engage in sexual harassment of co-workers, subordinates or supervisors. Sexual harassment proscribed by this paragraph includes, but is not necessarily limited to, the following:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical contact of a sexual nature when it is unwelcome and: (1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) Such conduct has

the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

CHAPTER 3 — FAMILY AND MEDICAL LEAVE RIGHTS

An employing office shall comply with the Family and Medical Leave Act of 1993, which entitles federal court employees to receive up to 12 administrative workweeks of unpaid leave per year. For more information, see [Volume 12, Chapter 9, Section 920.20.35](#) of the Guide to Judiciary Policy.

CHAPTER 4 — EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES

An employing office shall not discriminate against an eligible employee or deny an eligible employee reemployment rights or benefits under the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. § 4301 et seq.

CHAPTER 5 — OCCUPATIONAL SAFETY AND HEALTH PROTECTIONS

[Not to be effective until such time as the Administrative Office of the United States Courts provides a set of guidelines governing occupational safety and health protections.]

Each employing office shall provide to its employees a place of employment which is free from recognized hazards that cause or are likely to cause death or serious physical harm to employees. Claims that seek a remedy that is exclusively within the jurisdiction of the General Services Administration ("GSA") or the United States Postal Service ("USPS") to provide, or complaints which relate to matters under the control of a private landlord, are not cognizable under this Plan; such requests should be filed directly with GSA, the USPS, or the private landlord, as appropriate.

CHAPTER 6 — POLYGRAPH TESTS

Unless required for access to classified information, or otherwise required by law, no employee may be required to take a polygraph test.

Chapter 7 – WHISTLEBLOWER PROTECTION

A. GENERAL

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority, take or threaten to take an adverse employment action with respect to any employee (excluding applicants for employment) because of any disclosure of information to—

1. the appropriate federal law enforcement authority, or
2. a supervisor or managerial official of the employing office, a judicial officer of the court, or the Administrative Office of the United States Courts,

by the latter employee, which that employee reasonably and in good faith believes evidences a violation of any law, rule, or regulation, or other conduct that constitutes gross mismanagement, a gross waste of funds, or a substantial and specific danger to public health or safety, provided that such disclosure of information—

1. is not specifically prohibited by law,
2. does not reveal case-sensitive information, sealed material, or the deliberative processes of the federal judiciary (as outlined in the *Guide to Judiciary Policy*, Vol. 20, Ch. 8), and
3. does not reveal information that would endanger the security of any federal judicial officer.

B. DEFINITION

For purposes of this Chapter, an "adverse employment action" means a termination, demotion, transfer, or reassignment; loss of pay, benefits, or awards; or any other employment action that is materially adverse to the employee's job status, compensation, terms, or responsibilities, or the employee's working conditions.

CHAPTER 8 — DISPUTE RESOLUTION PROCEDURES

A. ALLEGED VIOLATION BY JUDGE

Any employee alleging that a judge violated any rights granted under the First Circuit EEO Plan or this EDR Plan may file an EDR claim in accordance with this Plan. In such instance, all claims will be referred to the Chief Judge of the First Circuit Court of Appeals who will administer the claim pursuant to the Judicial Conduct and Disability Act, 28 U.S.C. § 351 et seq., and the Rules for the Judicial-Conduct and Judicial-Disability Proceedings promulgated by the Judicial Conference, pursuant to 28 U.S.C. §§ 331 and

358. See 28 U.S.C. §§ 351–362. At the conclusion of the Judicial Conduct proceeding, the Chief Bankruptcy Judge has the discretion to refer the matter back to the EDR claims procedures. If the claim is against the Chief Bankruptcy Judge, the most-senior active bankruptcy judge not disqualified shall administer the claim pursuant to the Act.

The court or employing office shall protect the confidentiality of allegations filed against a judge to the same extent as claims filed under 28 U.S.C. § 351 and the Rules for Judicial–Conduct and Judicial–Disability Proceedings promulgated by the Judicial Conference, pursuant to 28 U.S.C. §§ 331 and 358. See 28 U.S.C. §§ 351–362.

B. ALLEGED VIOLATIONS BY OTHERS

Before invoking a request for counseling or mediation, an employee (to the extent feasible) is encouraged to bring his or her concerns to his or her supervisor or unit executive, unless the supervisor or unit executive is the alleged violator. In such situation, the court or employing office should specify alternative neutral points of contact for the initial inquiry. An employee alleging that any of the rights granted under the First Circuit EEO Plan or this EDR Plan have been violated, and who seeks relief under this Plan, must file a request for counseling and/or mediation with his or her court’s EDR Coordinator in accordance with Section F of this Chapter.

An employee who claims a denial of the rights granted under Chapters 2 through 7 of this Plan shall seek resolution of such claims through the procedures of this Chapter. Generally, the procedural process consists of:

- (a) an informal resolution process consisting of counseling and/or mediation;
- (b) hearing before the chief judge of the relevant court (or a judicial officer designated by the chief judge of the relevant court); and
- (c) review of the hearing decision under procedures established by the First Circuit Judicial Council.

The court or employing office shall protect the confidentiality of the allegations filed under this Plan to the extent possible. However, information about allegations filed under this Plan shall be shared on a need-to-know basis. Records relating to violations under this Plan shall be kept confidential on the same basis.

C. GENERAL PROVISIONS AND PROTECTIONS

1. **PROHIBITION AGAINST RETALIATION** — The Court, any judge, unit executive, or their assistants, shall not retaliate against, coerce or interfere with a complainant or anyone participating in the filing and processing of a complaint.
2. **RIGHT TO REPRESENTATION** — Every individual invoking the dispute resolution procedures of this Plan or who may be affected uniquely and adversely by the resolution of a complaint under this Plan (such as, for example, a person whose promotion is claimed to have constituted a discriminatory practice) has the right (at his or her own expense) to be represented by a person of his or her choice if such person is available and consents to be a representative. The individual alleged to have violated rights under the Plan is also entitled to representation, at his or her own expense. The head of the employing office involved in proceedings under this Plan is likewise entitled to representation in the processing and resolution of such a matter. A court employee may accept the responsibilities of representation if it will not unduly interfere with his or her court duties or constitute a conflict of interest, as determined by the representative's appointing officer.
3. **CASE PREPARATION** — To the extent feasible, every individual who is involved in the dispute resolution procedures of this Plan may use a reasonable amount of official time to prepare his or her case, so long as it does not unduly interfere with the performance of his or her court duties, as determined by the court employee's appointing officer. If the appointing officer is involved in the dispute, then the determination shall be made by the chief judge of the relevant court.
4. **NOTICE** — If counseling is pursued, all communications shall be kept confidential. However, this confidentiality provision does not prevent disciplinary action against the individual alleged to have violated rights under this Plan. If mediation is pursued, and until final resolution of the complaint, every individual alleged to be involved in a violation of the provisions of this Plan has the right to have reasonable notice of the charges and an opportunity to respond to the allegations. The EDR Coordinator or Alternate EDR Coordinator shall inform the complainant at the initial meeting how this notice provision and the potential for discipline may eventually affect the confidentiality of the complaint.

5. EXTENSIONS OF TIME — The chief judge of the relevant court, or his or her delegee, may extend any of the deadlines set forth in this Chapter for good cause.
6. DISMISSAL OF CLAIM—On his or her own initiative or at the request of any party, the chief judge of the relevant court or presiding judicial officer may, at any time in the proceedings, dismiss a claim on the grounds that it does not invoke violations of the rights or protections granted under the First Circuit's EEO Plan or this EDR Plan, is untimely, is unduly repetitive of a previous claim, adverse action, or grievance, is frivolous, or fails to state a claim upon which relief may be granted.
7. RECORDS — At the conclusion of proceedings under this Plan, all papers, files and reports will be filed with the court's EDR Coordinator. No papers, files, or reports relating to a dispute shall be filed in an employee's personnel folder, except as necessary to implement an official personnel action.

D. DESIGNATION AND DUTIES OF EMPLOYMENT DISPUTE RESOLUTION COORDINATOR

1. DESIGNATION OF EDR COORDINATORS —There shall be two EDR Coordinators (the EDR Coordinator and the Alternate EDR Coordinator). The EDR Coordinator and the Alternate EDR Coordinator shall be individuals of the opposite sex so that employees may be provided a comfortable forum for discussion of possibly sensitive issues during the counseling process. The EDR Coordinator and Alternate EDR Coordinator shall be selected from different units of the court, to ensure that an employee can choose an EDR Coordinator who will be independent of the court unit in which the complaint arose, while being known by the court and understanding the functioning of the court.
2. DUTIES OF EDR COORDINATOR — The duties of the court's EDR Coordinator and Alternate EDR Coordinator shall include the following:
 - (a) INFORMATION. The EDR Coordinator shall provide information to the court and employees regarding the rights and protections afforded under this Plan;
 - (b) ADMINISTRATION. The EDR Coordinator shall coordinate and organize the procedures and establish and maintain official files of

the court pertaining to complaints and other matters initiated and processed under this Plan.

- (c) COUNSELING. The EDR Coordinator shall coordinate the counseling of individuals in the initial stage of the complaint process, in accordance with this Plan;
- (d) STATISTICS. The EDR Coordinator shall collect, analyze and consolidate statistical data and other information pertaining to the court's EDR Plan. The EDR Coordinator will draft for the court's approval an Annual Report to the Administrative Office.

E. GENERAL DISQUALIFICATION PROVISION

The chief judge of the relevant court may, from time to time, either by a continuing delegation or by a delegation for purposes of a particular matter, designate another judicial officer of the court to perform the duties assigned in this Chapter to the chief judge of the relevant court. A party may seek disqualification of a judicial officer, employee or other person involved in the dispute by written request to the chief judge of the relevant court. Such written request shall specify why the individual should be disqualified.

F. INFORMAL RESOLUTION: COUNSELING AND MEDIATION

The dispute resolution process is initiated by an attempt at informal resolution. Employees have the option of pursuing a counseling process, a mediation process, or both. An employee who believes that his or her rights under this Plan have been violated may first request counseling for him or herself. If an employee does not wish to request counseling, he or she may initiate an informal proceeding by filing a request for mediation. See Part 2 of this section. Some form of informal resolution shall be pursued before an employee can bring a formal complaint under Part G of this Chapter.

- 1. COUNSELING. Requests for counseling shall: be submitted to the court's EDR Coordinator or Alternate EDR Coordinator; be made within 30 days of the alleged violation or within 30 days of the time the employee becomes aware of the alleged violation; contain all the violations asserted by the claimant; and be in writing and signed. The procedures are as follows:
 - (a) WHO MAY SERVE AS COUNSELOR. The counseling shall be conducted by one of the court's EDR Coordinators who is not

disqualified from serving as counselor under Part E of this Chapter, and is not otherwise unavailable. If there is a disqualification or unavailability, the chief judge of the relevant court shall designate another qualified individual to perform the counseling function. The EDR Coordinator shall promptly provide a copy of the request for counseling to the unit executive and chief judge of the relevant court.

- (b) **PURPOSES OF COUNSELING.** The purposes of counseling shall be to discuss the employee's concerns and elicit information regarding the matter which the employee believes constitutes a violation; to advise the employee of his or her rights and responsibilities and the procedures of the court applicable to the employment dispute resolution process; to evaluate the matter; and to assist the employee in achieving an early resolution of the matter, if possible.
- (c) **CONFIDENTIALITY.** All contacts made, information obtained or exchanged and representations made by the complainant, the head of the office in which they are employed, any witness(es) and all other information obtained during the consultation process shall be treated in the same manner as other sensitive personnel issues which are normally confidential and for official use only. However, this confidentiality provision shall not prevent disciplinary action against the individual alleged to have violated rights under the Plan, where such action is deemed appropriate.
- (d) **FORM OF SETTLEMENT.** The EDR Coordinator (or Alternate EDR Coordinator) shall reduce to writing any settlement achieved during the counseling process. Any settlement shall be signed by the employee, his or her representative, if any, and all other individuals who are necessary to implement the settlement, but need not be signed by all employees who may claim to be adversely affected thereby. Any settlement which involves the expenditure of funds must be approved by the chief judge of the court in which the complaint arises, or his or her designee.
- (e) **DURATION OF COUNSELING PERIOD.** The period of counseling shall not exceed 30 days, beginning on the date that the request for counseling is received by the EDR Coordinator.

- (f) **CONCLUSION OF THE COUNSELING PERIOD AND NOTICE.** The EDR Coordinator shall notify the employee in writing of the end of the counseling period. Notice shall also be given to the unit executive. As part of the notice, the EDR Coordinator shall inform the employee that he or she may file a request for mediation or may file a formal complaint under Part G of this Plan.
- 2. **MEDIATION.** Requests for mediation shall be submitted to the EDR Coordinator (or Alternate EDR Coordinator). If an employee is initiating a proceeding with mediation, the request for mediation shall be mailed or hand delivered within 30 days of the alleged violation or within 30 days of the time the employee becomes aware of the alleged violation. Alternatively, the employee may mail or hand deliver to the EDR Coordinator (or Alternate EDR Coordinator) a request for mediation within 15 days after the notice of the conclusion of the counseling period is mailed. The request shall be made in writing and shall state the claim(s) presented. The procedures are as follows:
 - (a) **WHO MAY SERVE AS MEDIATOR.** As soon as possible after receiving the request for mediation, the chief judge of the relevant court or EDR Coordinator shall designate a mediator and provide written notice of such designation. Any person, except the court's EDR Coordinator, may serve as a mediator under this Plan. The EDR Coordinator has discretion to appoint as mediator: the First Circuit Court of Appeals Settlement Counsel, another qualified employee of the court, or someone from outside the court with the skills to assist in resolving disputes. If the complaint alleges that a judicial officer has violated the rights protected by this Plan, the mediator shall be a judicial officer designated by the chief judge of the court in which the complaint arises.
 - (b) **PURPOSE OF MEDIATION.** The mediator shall meet separately and/or jointly with the employee and his or her representative, if any, the individual(s) alleged to have violated the complaining employee's rights and the unit executive of the employing office. Such meetings may be held separately and/or jointly with the people involved to discuss alternatives for resolving a dispute, including

any and all possibilities of reaching a voluntary, mutually satisfactory resolution.

- (c) **CONFIDENTIALITY.** No person or party involved in the mediation process shall disclose, in whole or in part, any information or records obtained through, or prepared specifically for, the mediation process, except as necessary to consult with the parties or their representatives, or as necessary to discipline the individual alleged to have violated rights under the Plan, where appropriate.
- (d) **FORM OF SETTLEMENT.** The mediator shall reduce to writing any settlement achieved during the mediation process and secure the signature of the employee, his or her representative, if any, the individual who is authorized to enter into settlement on the employing office's behalf, and all other individuals who are necessary to implement the settlement; but need not be signed by all employees who may claim to be adversely affected thereby. The original settlement agreement shall be filed with the EDR Coordinator, who will promptly transmit copies to the parties and their representatives. Any settlement which involves the expenditure of funds must be approved by the chief judge of the court in which the complaint arises, or his or her designee.
- (e) **DURATION OF MEDIATION PERIOD.** The mediation period shall be 30 days (or a shorter period if mediation is concluded at an earlier date), beginning on the date the request for mediation is received. The employee is required to attend at least one mediation session. Thereafter, she or he may proceed to file a complaint. The mediation period may be extended by mutual agreement of the mediator and the parties.
- (f) **CONCLUSION OF MEDIATION PERIOD AND NOTICE.** If, at the end of the mediation period, the parties have not resolved the matter that forms the basis of the request for mediation, the EDR Coordinator (or Alternate EDR Coordinator) shall provide the employee, the employee's representative, if any, the individual who is the subject of the complaint and the employing office with written notice that the mediation period has concluded. The notice shall also inform

the employee of his or her right to file a complaint under Part G of this Chapter.

G. COMPLAINT, REVIEW AND HEARING

1. COMPLAINT. No later than 15 days after the notice of the end of the period of informal resolution is mailed, an employee may mail or hand deliver a complaint to the EDR Coordinator, who will retain the original and transmit copies to the chief judge of the court in which the complaint arises or designated judicial officer, the respondent, and the individual who is the subject of the complaint. The complaint shall be in writing, shall identify the complainant and all involved parties and individuals, and shall set forth a short and plain statement of the complainant's claim and the relief or remedy being sought. Claims not presented during counseling or mediation may not be pursued. The respondent shall be the employing office which would be responsible for redressing, correcting or abating the violation(s) alleged in the complaint. No individual shall be named as a respondent in the complaint.
2. RESPONSE. Upon mailing of a copy of the complaint, both the respondent, as defined in paragraph 1, above, and the individual alleged to have violated rights protected under this Plan shall have 15 days to respond to the allegations contained therein, in writing, to the chief judge or the designated judicial officer of the relevant court.
3. REVIEW OF PLEADINGS
 - (a) REVIEWING OFFICIAL. The complaint and any other documents shall be reviewed by the chief judge of the relevant court, or by another judicial officer of the court designated by the chief judge. In the event the chief judge is disqualified under Part E, or is unavailable to serve, the next most senior judge of the relevant court in regular active service who is available and qualified to serve shall assume the responsibilities of the chief judge under this Chapter. Any designation of a judicial officer from another court to hear and decide the case shall be arranged by agreement of the chief judges of the affected courts.

(b) REVIEW PROCEDURES. After notice to the complainant and an opportunity to respond, the chief judge of the relevant court or designated judicial officer may dismiss in writing any complaint that is found to be frivolous; to be unduly repetitive of a previous complaint; to fail to state a claim upon which relief may be granted; or to make a claim or claims that were not advanced in counseling or mediation.

(c) HEARING PROCEDURES

(1) HEARING OFFICER. If the chief judge of the relevant court or designated judicial officer does not dismiss the complaint under the preceding subsection, the chief judge or designated judicial officer, acting as the hearing officer, shall hold a hearing on the merits of the complaint unless he or she determines that no material factual dispute exists.

(2) SPECIFIC PROVISIONS. The presiding judicial officer may provide for such discovery and investigation as is necessary. In general, the presiding judicial officer shall determine the time, place, and manner of conducting the hearing. However, the following specific provisions shall apply to hearings conducted under this section:

(i) TIMING FOR HEARING. The hearing shall be commenced no later than 60 days after the mailing or hand delivery of the complaint.

(ii) NOTICE REQUIREMENTS. All parties, including but not limited to, the complainant, the unit executive of the office against which the complaint has been filed and any individual alleged to have violated rights protected by this Plan must be sent reasonable written notice of the hearing. Where the complaint is filed against a judge or other judicial officer by chambers staff, the Chief Bankruptcy Judge of the court will receive notice. See Ch. 7, Part A.

- (iii) PROCEEDINGS. At the hearing, the complainant, the employing office and the individual alleged to have violated rights under this Plan will have the right to representation. The complainant and the individual alleged to have violated rights under the Plan are responsible for all expenses associated with their representation by counsel. At the hearing, the complainant, the employing office and the individual alleged to have violated rights under the Plan will also have the right to present evidence and witnesses on his/her behalf; and the right to cross-examine adverse witnesses.
- (iv) RECORD. A verbatim record of the hearing must be kept and shall be the sole official record of the proceeding.
- (v) DECISION. In reaching his or her decision, the chief judge of the relevant court or presiding judicial officer shall be guided by judicial and administrative decisions under the laws related to this Plan and by decisions of the First Circuit Judicial Council under Part H of this Plan.
- (vi) REMEDIES. Remedies may be provided in accordance with Part I of this Chapter where the hearing officer finds that the complaint has established by a preponderance of the evidence that a substantive right protected by this Plan has been violated.
- (vii) TIMING FOR DECISION. The final decision of the chief judge of the relevant court or designated judicial officer must be issued in writing no later than 30 days after the conclusion of the hearing.
- (viii) NOTICE OF ACTION. All parties, including the individual alleged to have violated rights protected by this Plan, must be sent written notice of any action taken as a result of the hearing.

- (ix) MALICIOUS FILING. A finding by the hearing officer that a complaint has been filed maliciously will constitute grounds for adverse action.

H. NOTICE OF PROCEDURES FOR REVIEW

The complainant, the individual alleged to have violated rights under this Plan, or the employing office may petition for review of the decision under procedures established by the First Circuit Judicial Council. The petition for review must be filed within fifteen (15) days of the issuance of the final decision. The EDR Coordinator shall inform all persons served with notice of the final decision of the chief judge of the relevant court or designated judicial officer of the procedures to seek review by the Judicial Council. A review will be conducted by a judicial officer(s), based on the record created by the hearing officer, and shall be affirmed if supported by substantial evidence.

I. REMEDIES

1. ORDER FOR REMEDY. Where judicial officers acting pursuant to Part G or H of this Chapter find that a substantive right protected by this Plan has been violated, they may order a necessary and appropriate remedy. A remedy may be directed at correcting a past violation, prospectively insuring compliance with the rights protected by this Plan, or both. A remedy shall be tailored as closely as possible to the specific violation involved.
2. AVAILABLE REMEDIES. Remedies which may be provided to successful complainants under this Plan, excluding judges' secretaries, assistants and law clerks as to complaints against judges (see part 3, below), include, but are not limited to:
 - (a) placement of an employee in a position previously denied;
 - (b) placement in a comparable alternative position;
 - (c) reinstatement to a position from which previously removed;
 - (d) prospective promotion to a position;
 - (e) priority consideration for a future promotion or position;

- (f) back pay and associated benefits, including attorneys' fees, where the statutory criteria of the Back Pay Act, 5 U.S.C. § 5596, are satisfied;
 - (g) records modification and/or expungement;
 - (h) "equitable" relief, such as temporary stays of adverse actions;
 - (i) granting of family and medical leave; and
 - (j) reasonable accommodation of disabilities through the purchase of specialized equipment or the restructuring of duties and work hours, or other appropriate means.
3. JUDGES' SECRETARIES, ASSISTANTS, AND LAW CLERKS AS TO COMPLAINTS AGAINST JUDGES. Remedies available to judges' secretaries, assistants, and law clerks include those listed in part 2, above, except that a judge will not be required to continue any employer/employee relationship as a form of remediation.
4. REMEDIES NOT AVAILABLE. Remedies which are not legally available to any complainant include:
- (a) payment of attorneys' fees, except as available under the Back Pay Act, see 2(f) above;
 - (b) compensatory damages; and
 - (c) punitive damages.
5. ENFORCEABILITY OF REMEDIES
- (a) Pursuant to 28 U.S.C. § 332(d)(1), decisions reached and remedies ordered by the First Circuit Judicial Council will be binding on all judicial officers and employees within the First Circuit.
 - (b) A remedy ordered by a hearing officer under Part I of this Chapter or by the First Circuit Judicial Council under Part H of this Chapter cannot be appealed through a court's adverse action appeal procedure.

CHAPTER 8 – RECORD OF FINAL DECISIONS

Final written decisions under this Plan shall not name the complainant or individual respondents and shall be captioned as follows:

In the matter of a Complaint Arising Under the Employee Dispute Resolution Plan of the [insert court title]

Case No. [year-number]

The [enter court office name] as the Designated Employee Office

Final decisions made under this Plan will be available to the public free of charge upon written request addressed to the EDR Coordinator. The EDR Coordinator will remove the individual names that appeared in such a decision before the decision is released to the public.

CHAPTER 9 – NOTICE

Copies of this Plan shall be given to all employees upon implementation. After that date, copies will be given to each new employee, when hired, and upon request, to members of the public.

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APPENDIX 8
PERSONAL USE OF
GOVERNMENT OFFICE EQUIPMENT AND SERVICES
(Including Computers and the Internet)

13 PERSONAL USE OF GOVERNMENT OFFICE EQUIPMENT AND SERVICES

13.1 INTRODUCTION

This policy establishes guidance and procedures for acceptable use of government equipment and services including but not limited to: personal computers, related equipment, servers, software Internet and Intranet access, and e-mail service. These items are referred to as “equipment” and/or “services” for purposes of this policy. This policy applies to all Bankruptcy Court employees, contractors, vendors, and/or consultants who are referred to as the “user” for purposes of this policy.

The U.S. Bankruptcy Court provides you with a computer and appropriate software to be used in the completion of your work. By accepting your employment with the court, you agree to follow certain guidelines regarding the use of your computer, related equipment and services. As always, the Systems department will be happy to explain these guidelines and provide you with whatever help you need to use your computer most effectively.

13.2 GENERAL RULES

You are expected to conduct yourself professionally at all times. Your computer and the computer network of which it is a part should be used for official court business. Certain non-business applications such as games are provided, but they should be used with restraint and only during non-business hours, such as your lunch period. You must not download, store or transmit obscene, profane, or indecent materials, or any form of discriminatory or sexist material.

Internet Usage: Court employees have access to the public internet and the capability of sending and receiving email via the internet through the Lotus Notes program. All employees must be aware that the internet is an unsecured network. As such, information and email on the internet can be read, broadcast, or published without the knowledge or consent of the author. If the activity of the user is other than official

business, the publication of that activity could prove to be an embarrassment for this Court and the entire federal judiciary. Additionally, employees should be cautioned that the use of email, attachments, messages, documents or other communication are the property of the government and may constitute a federal record.

Employees are specifically prohibited from sending any court documents or work to their personal email account (Yahoo, AOL, Gmail)

13.3 PERSONAL USE

13.3.1 GENERAL

Bankruptcy Court employees may use personal computers, related equipment and services for officially authorized purposes only. *Limited personal use*⁹ of this equipment and services by employees is a privileged authorized use under the conditions set forth below. Please be aware, this policy does not supersede any applicable laws or regulations and this privilege to use government equipment for non-government purposes may be revoked or limited at any time.

13.3.2 PERSONAL USE EXCEPTION

Employees are permitted limited personal use of government equipment and services provided that the use: (1) does not interfere with official business; (2) occurs only during non-work time (e.g., when an employee is not otherwise expected to be addressing official business); 3) involves minimal additional expense to the government; and (4) is not illegal, disruptive, offensive, or otherwise inappropriate, as described below.

13.4 INAPPROPRIATE PERSONAL USE

Employees are expected to conduct themselves professionally in the workplace and to refrain from using government equipment and services for inappropriate activities. Inappropriate uses includes but is not limited to those activities which: (1) are illegal, offensive, or harassing to co-workers or the public; such as hate speech and material that ridicules others on the basis of race, color, religion, sex, national origin, or disability; (2) could cause congestion, delay, or disruption of service to any government system or technology (including video, sound, and other large file attachments and mass mailings); (3) involve any illegal activity, including gambling or copy right violations; (4)

⁹ See the Judicial Conference policy adopted at its September 2002 session, regarding [Personal Use of Government Office Equipment](#) (including information technology).

involve obscene, pornographic, sexually explicit or sexually oriented material; (5) are for commercial purposes or in support of outside business or employment activity of the employee or a friend or relative; (6) involve fund-raising,

13.5 RESPONSIBILITIES

Each user is responsible for (1) practicing “good judgment” when accessing and using any government equipment and/or services; (2) ensuring that any use of government property is for official business or is otherwise authorized and does not involve inappropriate activity; (3) ensuring that communications reflect appropriate business ethics and practices and that any personal use does not convey the appearance that the user is acting in an official capacity; and (4) performing work assignments. Users should report to their supervisors the receipt of any harassing or threatening material in the workplace. After reading this policy, users should consult with their supervisors to resolve questions.

Supervisors are responsible for (1) ensuring that users are fully informed about equipment and computer usage policies; (2) ensuring that use of the internet or email does not interfere with an employee’s job performance; and (3) informing higher level management of misuse.

13.6 PENALTIES FOR MISUSE

Users may be subject to penalties for inappropriate or unauthorized use of government office equipment and/or services. Penalties may include but are not limited to administrative action, ranging from counseling to removal from employment, criminal penalties, and financial liability depending on the nature and severity of the misuse.

13.7 PHYSICAL SECURITY

You are expected to take care of your computer. Avoid eating or drinking nearby; keep your work area clean; and be sure that your computer is plugged into a surge suppressor. If you take a laptop out of the office, it is your responsibility to guard it from theft and damage. You may be assessed the cost of repair/replacement for a computer or laptop that is damaged while in your possession or control.

13.8 OPERATIONAL SECURITY

13.8.1 BACKUPS

At 12:00 noon and 12:00 midnight a snapshot of all network files is taken. If a file is changed or deleted after this snapshot is taken the snapshot will still be available in the

unmodified state. This snapshot can be instantaneously retrieved by the owner of the file, or the systems department.

New and changed files on the network are backed up nightly to tape. Each weekend, all files are backed up to tape. The files on tape can only be retrieved by the system department and it typically takes a few hours to restore these files. Finally, all network drive data is replicated between servers in the main office and the divisional offices.

13.8.2 PASSWORDS

All staff should review the document [Guide to Creating and Protecting Strong Passwords](#) on the J-Net. In addition, the following guidelines should be followed:

- Do not share passwords with anyone.
- Don't write down your passwords.
- Don't store your passwords on your computer in an unencrypted file.
- Don't use the same password on multiple accounts.
- Don't use personal information that could easily be researched, e.g., telephone number, license plate, date of birth, marriage, graduation, or name of pet, child, spouse, etc.
- Don't provide your password in an email or in response to an email request – Internet phishing scams use fraudulent email messages to entice you to reveal your user names and passwords to try to steal your identity.
- Don't provide your password or other personal information in response to unsolicited telephone requests.

13.8.3 LOG OUT OF YOUR COMPUTER EACH EVENING

Password protect and set the delay on your screen saver to a reasonable length of time. If you are going to be gone from your desk longer than a few minutes, log out. Never write your password down.

13.8.4 VIRUS CONTROL

All court computers have virus control software installed. Do not disable it. All CDs that come from outside the court, including the ones that you take home and return, should be scanned for viruses. For example, if you work on a WordPerfect document at home and download it to a CD and bring it to court, you should have the CD scanned for viruses

before you use it on a court computer. Please call the Help Desk if you need assistance. If you receive a virus alert from your computer, call the Help Desk at once.

13.8.5 SOFTWARE

Like many other organizations, we prohibit the loading of any software on court computers other than that provided by the court. This includes third-party screen savers, games, and other personally-owned software.

Like all entities, the court is required to have a license for all the software installed on its computers. If you need a software program on your computer that is provided by the court, have your supervisor contact the Systems department and we will provide the necessary software.

13.9 I.T. SECURITY INCIDENT

An information security incident is something that can have a damaging effect on a computer or network and its related assets.

Examples of information security incidents include:

- Computer virus infections
- Compromised passwords
- Forged e-mail
- Attempted or actual break-ins
- Damage, disclosure, or loss of data
- Denial of Service (DOS) attacks
- Theft
- Identity theft
- Misuse of information systems
- Lost laptop or thumb drive
- Lost BlackBerry or PDA

13.9.1 What to do if a Security Incident Happens

Do not discuss actual or suspected incidents with the press.

Personnel must report actual or suspected security incidents to the IT Help Desk at 617-748-5385. When possible, please use the telephone rather than e-mail to report an incident. The incident will be verified and you will be given information and or guidance on what to do. If email is necessary, the Help Desk email is mabml_systems_staff@mab.uscourts.gov.

Reports should be made as soon as the incident is discovered or suspected, so the Help Desk can investigate and take appropriate measures to safeguard the US Courts network.

The I.T. department will report all such incidents to the Judiciary Automated Systems Incident Response Capability (JASIRC).

13.10 REMOTE ACCESS

We provide several means of remote access to court systems for employees. All employees can access their email from any computer anywhere through J-Ran. VPN access allows an employee to remote to his/her desktop and work on the computer as if he/she were in the office. Judges, managers and supervisors all have VPN access. The VPN is maintained by the Administrative Office and the Office of the Circuit Executive. This access is provided for the convenience of the court and must be used only for approved court business.

VPN accounts are requested only with the approval of the Chief Judge or Clerk of Court. VPN passwords must follow the Password Policy approved by the 1st Circuit. The password policy can be found at:

http://www.circ1.dcn/docs/IT_Dept/VPN%20password%20policy.pdf

All users requesting a VPN account must sign and agree to the guidelines outlined in the 1st Circuit Network User Agreement which can be found at:

<ftp://ftp.circ1.dcn/software/VPN/useragree.pdf>

13.11 E-MAIL POLICY

13.11.1 USE OF E-MAIL/INTERNET MAIL

All employees are provided with a Lotus Notes email account. When you use Lotus Notes within the judiciary or to access internet mail, you are expected to refrain from sending obscene, profane, or indecent materials, or any form of discriminatory or sexist material. Use of Lotus Notes email will be treated similarly to “local telephone calls,” and staff will keep the use of email for personal or non-public use to a minimum. Users should exercise discretion in such use, keeping in mind that such use is traceable to the court and to the individual user.

For security reasons, all employees are strongly discouraged from using their court computer to access any private email account that he/she may have, such as accounts with Yahoo.com, Hotmail.com, and the like

At its September 2005 session, the Judicial Conference of the United States adopted the computer security policies recommended by the Committee on Information Technology in its Report on Judiciary Network Security and Privacy. This section was excerpted from that policy, which is located on the J-Net at:

http://jnet.ao.dcn/Information_Technology/Computer_Security/Personal_Web_Internet_E-Mail.html

“Access to personal Internet web e-mail accounts from within the judiciary’s private data communications networks is strongly discouraged. Use of these accounts poses threats to the judiciary’s information technology infrastructure.

Because web e-mail messages and their attachments bypass the existing network anti-virus protections in place at the Internet gateways and on the courts’ Lotus Notes e-mail servers, the retrieval of e-mail from personal Internet service provider accounts has been a primary source of computer virus and worm infection on the judiciary’s networks (emphasis added). Our Lotus Notes e-mail is screened and protected through the national Internet gateways and on the courts’ local Lotus Notes e-mail servers, but current technology provides no way to virus-scan personal e-mail or attachments accessed from Internet-based e-mail providers before they are opened by the recipient. Although none of the viruses or worms found to have infected the judiciary’s networks have yet done permanent damage, it has taken a great deal of time and effort to clean up each infection, and in some cases portions of the network have been inoperable for a period of time. The cost of clean-up efforts cannot be reliably calculated, but it is

undoubtedly significant. The infection rate for Internet e-mail traffic is increasing daily, posing an ever-increasing threat. Accordingly, it is the official policy of the Judicial Conference that access by judiciary personnel to personal Internet e-mail accounts (including AOL Mail, Gmail, Hotmail, and Yahoo!) from within the judiciary's networks is discouraged."

13.12 GOOD E-MAIL MAINTENANCE PRACTICES

13.12.1 MESSAGE CONTENT

Originators (users) are responsible for the quality, tone, and content of their own written and telephonic communications, including e-mail and voice mail. Written documents, e-mail messages, and voice mail messages are a reflection of the originator (user) and may be forwarded to others without any explicit permission.

Users should use forethought when sending and forwarding written documents, e-mail messages, and voice mail messages. Do not leave sensitive information on voice mail; limit the length and details of your message; and leave your phone number so the recipient can respond.

Originators and forwarders should be aware that all written and digital communications leave a paper trail and may become official government records.

Written documents and e-mail messages should have an informative subject line, be about one-subject, and should include a name and number for the recipients to call for more information.

13.12.2 ADDRESSEES/RECIPIENTS

Limit distribution of materials and messages, whether electronic or hard copy, to only the parties necessary to ensure a proper and efficient response and/or to receive the information.

13.12.3 PROOFREAD

Originators should re-read all documents, materials, and messages for correct spelling, grammar, content, tone, and purpose before sending. Originators should take advantage of the tools provided in current systems, such as spell check, grammar checkers, and the thesaurus, as well as asking co-workers to read for clarity and tone.

13.12.4 ATTACHMENTS

Exercise discretion when sending or forwarding large written documents, e-mail messages and/or attachments. Consider the purpose, cost, and storage available before copying, sending, forwarding, and/or printing. Transmitting and storing may be difficult when attachments include tables, graphics, colors, forms, or heavily formatted documents.

13.12.5 IDS – LOG-ON IDENTIFICATION AND PINS – PERSONAL IDENTIFICATION NUMBERS

Each user is given an individual log-on ID and is responsible for maintaining appropriate passwords. Users should not use another user's ID to send messages or access voice mail unless specific permission is given. If it is necessary to send a data or voice message from the equipment of another user, the originator should add an explanatory note in the text or voice mail of the message. Also, users should not share another user's email address without explicit permission of the owner of the e-mail address.

Pacer logins are assigned to appropriate staff for the purpose of accessing data in other court districts. These logins allow court users to view court data without charge. Court Pacer Logins and passwords must be kept secure and must only be used for work-related purposes. Usage reports will be regularly reviewed by the ISO for unauthorized use of the system.

13.12.6 MAINTENANCE

Users should make timely effort to read, listen, and respond to e-mails, voice mails, and correspondence. When a user is absent from the office for an extended period of time, tools are available (such as e-mail rules and voice mail options) to inform others that the user is not able to respond immediately.

It is recommended that users routinely review and purge their email. The best way to keep messages and to ensure good performance of the system is to routinely archive messages using Lotus Notes Archive.

13.12.7 VIRUSES VIA E-MAIL

Viruses are often spread through attachments to e-mail messages. The Help Desk will keep you informed if there is a known virus threat. You can do your part by reporting any e-mail messages you receive from unknown parties that have attachments. Do not open the attachment until the Help Desk has been notified.

13.12.8 EMAIL PRIVACY

Users should be aware that Internet sites capture the domain name of accounts accessing a specific site and maintain a record of the domain name. It could be embarrassing to a user and the judiciary if the domain name "uscourts.gov" were found on the access records of an inappropriate site.

13.13 INTERNET USE

The Court has granted all employees access to the Internet through the DCN. Use of the DCN and the Internet services provided by the Court is subject to monitoring for security and/or network management reasons. Users of these services are therefore advised of this monitoring by the Court and the Administrative office. Each time a user logs on to the system, a pop-up box will appear informing them of this policy. Access is provided only upon agreement to this policy, which the user acknowledges by clicking the box and accepting the statement.

Access to the public internet system is a privilege, not a right, and failure to adhere strictly to these guidelines will result in termination of the privilege. Abuse of this privilege may subject the user to disciplinary action as well.

Use of the public internet system will be treated similarly to "local telephone calls," and staff will keep the use of the internet for personal or non-public use to a minimum.

Internet access must be used with discretion and in the best interests of the government. **Employees are reminded that proper use of the internet precludes using it in any manner that could reflect poorly upon, or cause embarrassment to, this Court or the Judiciary.**

13.13.1 SPECIFIC PROVISIONS

1. Employees are specifically prohibited from sending any court documents or work to their personal email account (Yahoo, AOL, Gmail)
2. Employees are specifically prohibited from uploading any court documents to 3rd party document hosting or file sharing service (Google Docs, DropBox)
3. Users will not utilize the Internet network for illegal, unlawful, or unethical purposes or to support or assist such purposes. Examples of this would be the transmission of violent, threatening, defrauding, obscene, or unlawful materials.
4. Users will not utilize the Internet network for partisan political purposes, personal commercial purposes, or private gain.

5. Users will not utilize the Internet systems, e-mail or messaging services to harass, intimidate or otherwise offend another person. Such activities include hate speech or material that ridicules others on the basis of race, creed, religion, color, sex, disability, or sexual orientation.
6. Users will not utilize the Internet network to disrupt other users, services or equipment. Disruptions include, but are not limited to, distribution of unsolicited advertising, propagation of computer viruses, and sustained high volume network traffic which substantially hinders others in their use of the network.
7. Users will not make inappropriate personal use of the Internet network, nor utilize the Internet network in a manner that will reflect poorly upon or cause embarrassment to the court. Downloading, viewing, storing, and transmitting sexually-explicit or sexually-oriented materials is inappropriate use.
8. Users will not utilize the Internet network to host unauthorized web sites.
9. Users will not utilize Peer-to-Peer file sharing software such as Gnutella, Kazaa, and Napster.
10. Users will not utilize the Internet network to send and receive chain letters.
11. Users will utilize the Internet network to access only files and data that are their own, that are publicly available, or to which they have authorized access.
12. Users will refrain from monopolizing systems, overloading networks with excessive data, or otherwise disrupting the network systems for use by others.
13. Other than what is installed by the Systems department on a computer, court-owned computers should not have any other software loaded on them.
14. Users will not utilize the Internet network to participate in chat rooms.

13.14 INSTANT MESSAGING

Pursuant to the policy of the Judicial Conference of the United States applicable to all court units, all employees are strictly prohibited from using any form of instant messaging other than that provided within Lotus Notes unless the IT Department is informed **and** the AO recommended Client Settings have been made and verified by IT Personnel. These types of programs pose a serious security risk and therefore they will be blocked by the judiciary, but if other means or methods exist now or in the future

that would allow access to any type of instant messaging service, this policy would extend to that means or method and employees are strictly prohibited from using such instant messaging service.

13.15 PRIVACY

This is a place of business, a public office, and employees' use of office equipment, computers and related software, email and internet access is subject to review and examination by management.

Violation of any aspect of this Computer Use Policy may subject the employee to disciplinary action up to and including termination from employment.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

EMPLOYEE AGREEMENT FOR PERSONAL USE OF GOVERNMENT OFFICE EQUIPMENT,
COMPUTER USE, EMAIL AND INTERNET ACCESS

I have read, understand and agree to abide by the policies issued by the U.S. Bankruptcy Court for the District of Massachusetts governing personal use of government equipment, computer use, email and internet access.

I understand that I have no expectation of privacy with respect to any and all communication or information generated, received or transmitted through the use of government computers or office equipment.

Finally, I understand that any violation of these policies, including a criminal violation, may result in disciplinary action and/or appropriate legal action taken against me.

Employee Signature

Date

Employee (Print Name)

Note: Please read, sign and return the original copy of this agreement to our Personnel Office within five business days. It will be retained in the employee's personnel file.

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APPENDIX 9

REQUEST FOR COMPENSATORY TIME AUTHORIZATION

Employee Name: _____

Date Work is to be Performed: _____

Approximate Time Required: _____ (½ hour increments)
(Sign-in/Sign-out Sheet Must Reflect Actual Time Worked)

Emergency: ☐ Yes ☐ No

(Court hearings beyond normal working hours are considered an emergency.)

Reason for the Request and/or Description of the Work to be Performed:

Date Employee Signature and Title

Date Supervisor's Signature and Title

Forward the original form to the Personnel Department, copy to the Clerk of Court.

